



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR ,MNDC, RPP

### Introduction

This hearing dealt with an application by the tenant for orders setting aside a notice to end tenancy, ordering the landlord to return personal property and awarding damages to the tenant. Although served with the Application for Dispute Resolution and Notice of Hearing by personal service on Jun3 and the Amended Application for Dispute Resolution on July 30 the landlord did not appear.

### Issue(s) to be Decided

- Should an order be made compelling the landlord to return personal property and, if so, upon what terms?
- Is the tenant entitled to a monetary order and, if so, in what amount?

### Background and Evidence

This month-to-month tenancy commenced January 20, 2014. The monthly rent is \$400.00. The rental unit is a basement suite. The landlord and his family live upstairs.

On June 10, as a result of an incident involving the landlord's family the tenant was arrested and charged with assault. He was eventually released on his recognizance. The conditions of his release included terms that he could not return the rental unit without a police escort and there could be no contact with the landlord or any members of his family.

The landlord immediately applied to the Residential Tenancy Branch for an early end to the tenancy and by an order dated June 26 that application was granted. The tenancy was ended and the landlord was awarded an order of possession.

Since his release the tenant has made various attempts to retrieve his possessions. Immediately upon his release from custody he went with a police officer to pick up some personal items.

Towards the end of June he hired a truck and two men to pick up his belongings. The movers went to the rental unit, went into the rental unit, and then left without taking anything. In a subsequent discussion they told him there was too much junk.

The tenant then hired a junk dealer to pick up his belongings. The junk dealer went to the rental unit and then refused to do anything.

The tenant made arrangements with a man named George to move his belongings. George delivered one van load to the tenant's storage locker and then refused to do any more.

Another person overheard the tenant and George arguing and volunteered to move the tenant's belongings in his vehicle. This person hauled two and one half loads from the rental unit for the tenant. When he brought the last half load he told the tenant he "couldn't find anything else". Later in the discussion he told the tenant there was too much there and he was not a janitor.

The tenant then recruited his friend Charles. There was some difficulty arranging a time that was suitable for the landlord, the police and Charles but eventually Charles was able to go to the rental unit.

Charles filed a letter describing the events of that visit on July 24. The landlord told Charles and the police that he was not willing to have the tenant in the house but that he would let someone else have access if they would take everything the tenant had left there. The landlord also asked that if the tenant needed to be there that he give the landlord, through Charles or someone else, adequate notice so that his children would not be present when the tenant was there. The landlord also told Charles that he had found someone who was prepared to remove all of the tenant's belongings for \$250.00.

Since that date the tenant has had difficulty contacting Charles.

Several times during his testimony the tenant described the rental unit as very small and that, as a result, he had stuff stored in the yard and in a shed in the back.

The tenant filed a list of belongings he said was still at the rental unit which included a piano, entertainment unit, two stereos, a full living room suite, six lamps, a variety of speakers and receivers, and "collectible artistic pieces of furniture". Some of the belongings that have already been removed from the rental unit include seven guitars and an accordion.

The tenant expressed the opinion that the reason all of his previous movers/helpers have failed to carry out the job is because the landlord maligns the tenant to them and as a result of what they have heard, they decide they will not do the work.

### Analysis

The application for an order setting aside a notice to end tenancy is redundant as the tenancy has already been ended and an order of possession granted to the landlord by a previous arbitrator's decision.

On any claim for damage or loss the party making the claim must prove, on a balance of probabilities:

- that the damage or loss exists;
- that the damage or loss is attributable solely to the actions or inaction of the other party; and,
- the genuine monetary costs associated with rectifying the damage.

To be successful on his application, both for damages and for an order for return of personal possessions, the tenant must prove that the landlord's actions is the sole reason why he has not been able to retrieve his personal belongings.

The evidence is that several different people have been allowed into the rental unit by the landlord and that most of them have removed at least on vanload or carload of items for the tenant. The evidence is that landlord is prepared to allow Charles back into the rental unit to remove the balance of the tenant's personal belongings.

The problem is not the landlord's refusal to permit access; it is the refusal by the tenant's movers/helpers to complete the task. The evidence is that the tenant has had an argument with all of his movers/helpers. Although he argues that it is because of what the landlord has said to them it is just as likely that it is a result of some action by the tenant or what the movers/ helpers see when they get to the rental unit.

The tenant has not established one of the main elements of his claim on a balance of probabilities. Accordingly, his claim is dismissed in full.

If at some point in the future the landlord does refuse entry to the unit or the tenant retrieves his belongings and is of the opinion that they have been damaged as a result of the landlord's action or inaction, the tenant has leave to file a new application for dispute resolution on that issue.

Conclusion

The tenant's claim is dismissed in full.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 21, 2014

---

Residential Tenancy Branch

