



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, OPT

### Introduction

This hearing was convened by way of conference call in response to the tenant's application for an Order of Possession of the rental unit; for a Monetary for the return of the tenant's security deposit; and for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement.

The tenant and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlords testified that they had faxed evidence into the Residential Tenancy Office; however this was not received prior to the hearing and I have no evidence before me to show evidence was received by this office. The landlords proceeded with verbal testimony.

### Issue(s) to be Decided

- Is the tenant entitled to an Order of Possession of the rental unit?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to a Monetary Order to recover the security deposit?

### Background and Evidence

The parties agreed that this tenancy started on July 05, 2014. No written tenancy agreement was signed by the parties as the landlord lived out of the province and did not attend at the unit or appoint an agent at the start of the tenancy. Rent for this unit was \$850.00 per month due on the 5<sup>th</sup> of each month. The tenant paid a security deposit of \$425.00 and a key deposit of \$100.00 on July 04 or July 05, 2014.

The tenant testified that the landlords served the tenant with a hand written 30 day notice to vacate the rental unit on August 03, 2014. The tenant testified that this illegal notice was given to the tenant because of some problems the tenant had with the strata the first week of the tenancy. The tenant testified that the landlord had not explained to the tenant prior to renting this unit that this was a Strata controlled building.

The tenant testified that when the landlord SW first served the tenant with the 30 day Notice the tenant did not know that this was an illegal notice and so informed the landlord that the notice would not be effective until September 05 as the tenants rent was due on that date. The tenant then asked SW for a few more days to vacate. SW was very cooperative at that time and said it would not be a problem. On September 03, SW came back to the unit and continued to knock on the door while the tenant was in the shower; when the tenant opened the door the tenant informed SW that she would need a few more days until September 10, to move out. The tenant informed SW that she had \$500.00 in cash to pay for any extra days. Again SW was very agreeable and cooperative.

The tenant testified that on September 05, 2014 SW was again banging on the tenant's door at 9.00 a.m. while the tenant was in the shower. When the tenant answered the door SW said the tenant had to be out that day. The tenant testified that she went out to get groceries later around 2.00 p.m. and when the tenant returned she found SW, the building manager and another person in the parking lot. SW was yelling at the tenant that he had changed the locks and locked the tenant out. The tenant testified that she

informed SW that he could not do that and SW said he could do it. The tenant testified that this was extremely embarrassing for the tenant with other tenants hearing what was going on. The tenant testified that she was very upset and entered the building with an acquaintance and went to the door of her rental unit but found that the landlords had changed the locks. The landlord SW approached and started to laugh at the tenant in the hallway and the tenant's acquaintance had to tell the landlord to stop as it was upsetting the tenant. The tenant went back downstairs and called the police.

The tenant testified that when the police arrived neither the landlord or the tenant had any documents to show that the tenant had been legally evicted. The tenant was very distressed and an officer asked the tenant if she wanted to get into the unit to get any belongings or medication. The tenant testified that she was crying and upset but did enter the unit with the officer. The tenant testified that she found a female toy that had been in her bedroom and this had been placed in the bathroom by the landlords. The tenant testified that the landlords had gone through her belongings to find this toy and the tenant found this very embarrassing and distressful. The tenant testified that she could not find her medication and so left the unit without taking anything due to her distress. A cab driver saw the tenant in great distress so picked her up and took her to her acquaintance's house. The tenant testified that this was someone the tenant hardly knew and she was forced to stay the night at this person's home.

The tenant testified that the next day she went to the RCMP to talk about the illegal eviction notice. The police would not help the tenant and told her to come back later. The tenant returned a few more times but the police were too busy to talk to the tenant and said the tenant had to come back on the Monday morning or go to the Residential Tenancy Office. The tenant testified that she had no clothes, no medication and no money. The tenant went back to the RCMP on Sunday and the police then had a proof of service document for a 30 day notice which had been in the tenant's closet in the unit and was provided when the landlord served the handwritten notice. The police then believed that the tenant was served a legal notice and would not assist the tenant in getting back into the unit. The tenant testified that the landlord did not have an Order of

Possession and had not served a legal One Month Notice to End Tenancy for cause. The tenant testified that in order for the police to have this document the landlords must have entered the tenant's unit over the weekend and gone through the tenant's belongings again.

The tenant testified that on September 07 the police gave the landlord permission to go into the unit and pack up the tenant's belongings and put them in a storage locker. The police were given the key to the storage locker and the tenant had to return the key to the building in order to get the key to the storage locker. This exchange was facilitated by an advocate for the tenant around September 18. The tenant testified that after this event the landlords were in the unit cleaning when the tenant's ex-boyfriend arrived and gave the landlords his key to the unit.

The tenant testified that she went to the storage locker and found everything was in a complete mess and disarray. The tenant has not been able to determine if all of her belongings are in the storage locker including the envelope with the \$500.00 in it for Septembers rent, some new window coverings, and a new shower head the tenant had installed in the unit. The tenant testified that due to all the issues with the landlords the tenant no longer wishes to return to the unit and therefore withdraws her application for an Order of Possession of the unit.

The tenant testified that due to the humiliation, aggravation, being made homeless and having to live without her medication, clothes and personal belongings the tenant seeks compensation from the landlords of \$2,934.00. This is comprised of \$860.00 for medication, approximately \$30.00 a day for eating out from September 05 as the tenant did not have anywhere to cook meals; the cost of living elsewhere for the month; gas costs to drive to and from the unit and the police of approximately seven round trips at 50k a tip; \$300.00 for replacement toiletries; \$450.00 for moving costs to remove the tenant's belongings from storage to the new home; the cost to pack the tenant's belongings securely to move them; the return of the \$500.00 left in the unit for Septembers rent; the return of the \$425.00 security deposit and \$100.00 key deposit.

The landlords disputed the tenant's claim. The landlord SW testified that they were not aware that the hand written notice was not a legal or valid notice to end the tenancy and they were not aware that they could not evict the tenant from the unit without an Order of Possession.

SW testified that in all the meetings they had with the tenant the tenant appeared to be irrational and they had been told by the tenant's advocate that the tenant had mental issues. SW testified that due to the condition they found the unit in the tenant could not live on her own as the unit was in a dirty mess. TW testified that she only came to the unit three times in August and each time the tenant slammed the door in the landlord's face. SW testified that she was not at the unit until after the police arrived on September 05.

SW testified that the tenant did not return all the keys to the unit but agreed they did get back two building keys; however, the parking remote was not returned. The landlords agreed to return the tenant's security deposit of \$425.00, only if they can reach an agreement with the tenant at the hearing, as the tenant left a lot of mess in the unit which the landlords have had to clean. The landlords testified that they also had to pay for the storage of the tenant's belongings so were not willing to compensate the tenant for any further amounts.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to s.30 of the *Act* which states:

**30 (1)** *A landlord must not unreasonably restrict access to residential property by*

*(a) the tenant of a rental unit that is part of the residential property, or*

*(b) a person permitted on the residential property by that tenant.*

S. 31(1) of the Act states:

**31** *(1) A landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property.*

I further refer the parties to s. 52 of the Act which states:

**52** *In order to be effective, a notice to end a tenancy must be in writing and must*

*(a) be signed and dated by the landlord or tenant giving the notice,*

*(b) give the address of the rental unit,*

*(c) state the effective date of the notice,*

*(d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy, and*

*(e) when given by a landlord, be in the approved form.*

I have reviewed the Notice given by the landlords to the tenant and find it is not on an approved form and therefore I find the Notice is illegal and is not valid or enforceable. Furthermore, a landlord is not entitled to evict a tenant even if proper notice has been given without an Order of Possession issued by the Director of the Residential Tenancy Office under s. 55 of the Act and a writ of Possession from Supreme Court. I therefore find the landlords are in breach of s. 30, s. 31 and s. 52 of the Act. However, as the tenant has withdrawn her application for an Order of Possession I will not issue an Order of Possession for the tenant to gain access to the rental unit.

With regard to the removal of the tenant's belongings; a landlord is not entitled to remove tenant's belongings from a rental unit unless a tenant has abandoned the belongings in the rental unit or the landlord has an Order of Possession under s. 55 of

the *Act* and has had that Order enforced in the Supreme Court of British Columbia. The Supreme Court would then order bailiffs to enter the unit under a writ of Possession and the bailiffs would remove the tenant's belongings. Consequently, it is my decision that the tenant did not abandon her belongings, the tenant was locked out of the unit by the landlords and the landlords did not have an Order of Possession under s. 55 of the *Act* and should not have removed the tenant's belongings from the unit.

With regard to the tenants claim for monetary compensation; an arbitrator may award aggravated damages. These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Losses of property, money and services are considered "pecuniary" losses. Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of self-confidence, loss of amenities, mental distress, etc. are considered "non-pecuniary" losses.) Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's willful or reckless indifferent behaviour. They are measured by the wronged person's suffering.

- The damage must be caused by the deliberate or negligent act or omission of the wrongdoer.
- The damage must also be of the type that the wrongdoer should reasonably have foreseen in tort cases, or in contract cases, that the parties had in contemplation at the time they entered into the contract that the breach complained of would cause the distress claimed.
- They must also be sufficiently significant in depth, or duration, or both, that they represent a significant influence on the wronged person's life. They are awarded where the person wronged cannot be fully compensated by an award for pecuniary losses. Aggravated damages are rarely awarded and must specifically be sought.

Having considered the evidence before me I find the landlords acted negligently by not considering or understanding the *Residential Tenancy Act* that governs them when they become landlords in British Columbia. It is not enough for landlords to state that they were unaware of their obligations and responsibilities under the *Act* and to act in a manner which has caused suffering and distress to the tenant who was illegally evicted from the rental unit. The tenant is entitled to some compensation for being made homeless; for having to live without her belongings and medication; and for the stress, humiliation, inconvenience and suffering caused by the landlords when they took these steps, in breach of the *Act*, to evict the tenant from her home. I find therefore that the tenant is entitled to aggravated damages to an amount of **\$2,000.00**.

I find the tenant has insufficient evidence to show that there was \$500.00 left in the unit or that if that sum was in the unit, that it was not packed by the landlords and left in the storage locker. I have insufficient evidence from the tenant to show how much was spent on accommodation, meals, gas, medication, clothes or toiletries and I therefore find the aggravated damages awarded above must be sufficient to compensate the tenant.

With regard to the tenant's claim for moving costs of \$450.00; I find the tenant has insufficient evidence to show how much it will cost for her to pack and move her belongings to new accommodation; however, as these belongings were illegally removed by the landlords I find the tenant is entitled to some compensation to cover any moving costs. Without an estimate or invoice showing what this cost will be I must limit the tenant's claim to **\$300.00**.

With regard to the tenant's claim to recover the security and key deposits; the tenant did not give the landlords a forwarding address in writing, as required by s. 38 of the *Act*, prior to applying for arbitration. The address on the tenant's application is an address for service and not a forwarding address as defined by the *Act*.



Therefore at the time that the tenant applied for dispute resolution, the landlords were under no obligation to return the security deposit or key deposit and therefore this section of the application is premature. However, at the hearing the tenant did provide a forwarding address and I therefore find the landlords have 15 days from today's date to either file an application to keep the security deposit or return the security deposit to the tenant. I therefore dismiss this portion of the tenant's claim with leave to re-apply.

### Conclusion

I HEREBY FIND in partial favor of tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$2,300.00** pursuant to s. 67 of the Act. The Order must be served on the respondents. If the respondents fail to pay the Order, the Order is enforceable through the Provincial Court as an Order of that Court.

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: October 01, 2014

---

Residential Tenancy Branch

