



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BC LTD 0955802 WEST HOTEL  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** MNR OPR MNSD MNDC FF

### **Introduction:**

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 46 and 67 for unpaid rent;
- b) An Order of Possession pursuant to sections 46 and 55;
- c) An Order to retain the security deposit pursuant to Section 38; and
- d) An order to recover the filing fee pursuant to Section 72.

This hearing also dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- e) To cancel a Notice to End Tenancy for unpaid rent; and
- f) To obtain compensation for harassment and disturbance of his peaceful enjoyment.

### **SERVICE**

Only the tenant attended the hearing and said he never received the Notice to End Tenancy and never received the landlord's Application for Dispute Resolution but his advocate told him of the hearing. He gave sworn evidence that he served the staff of the landlord with his Application for Dispute Resolution. I find only the tenant's documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

### **Issue(s) to be Decided:**

Has the landlord proved on the balance of probabilities that there is unpaid rent and they are entitled to an Order of Possession and a Monetary Order for rental arrears? Is the landlord entitled to recover filing fees and to retain the security deposit to offset amounts owing?

Or is the tenant entitled to relief and to a monetary order to compensate him for the loss of his reasonable enjoyment and harassment by the landlord and an order that his visitors may gain access?

### **Background and Evidence:**

Only the tenant and his witness attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced on August 31, 2012, that rent is \$525 a month inclusive and a security deposit of \$250 was paid in August 2012. The landlord claims that \$2550 is owed for unpaid rent to the end of October 2014 but they did not attend to specify the amounts owed and the dates and did not supply a rental ledger as evidence.

The tenant said he has paid all his rent through direct payment from the ministry. When queried about the copy of one cheque for \$375, he said that it was the only time he asked the ministry to reduce the amount to the landlord for February 2014. In his evidence he included copies of a cheque dated July 23, 2014 paid by the ministry to the landlord for \$375, but for June, 2014, the cheque shows \$525 made out to the tenant, not the landlord. In a decision under file #821010, an arbitrator found the tenant's evidence was that he owed no rent as of June 23, 2014 but the landlord had not attended the hearing at that time to support his records, if any.

The tenant is requesting compensation for intimidation, harassment and persecution by the landlord and their staff. He said this was caused mainly by the actions of a Y.N. who may have been a part owner but is no longer there. He said that things are much better since new management took over the building. He described the behaviour of Y.N. as stalking him in the hallway, threatening him with violence, knocking on his door very late at night and demanding rent and stopping his guests coming to see him when they visited within the hours allowed by house rules. He said he has been allowed visitors since last week when management changed. A witness who was a former resident testified under oath that he saw Y.N. threatening to kill the tenant and grabbing him and he said that Y.N. stopped him from visiting the tenant during daylight hours on a number of occasions.

In evidence is the Notice to End Tenancy for unpaid rent, the tenancy agreement, some copies of rent cheques of the tenant and a statement from the landlord which seems to refer to another female tenant and not this tenant. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

### **Analysis**

#### **Monetary Order:**

The onus is on the applicant to prove on a balance of probabilities their claim. I find the landlord has not satisfied the onus. Although the tenant may have some outstanding rent, the landlord did not attend to support their Application and the tenant claims he never received it. I dismiss the Application of the landlord with leave to reapply for

outstanding rent as it is impossible to determine if any rent is owed through the documents submitted by both parties.

On the tenant's application, the onus is on him to prove on the balance of probabilities that the landlord has unreasonably interfered with his peaceful enjoyment contrary to section 28 of the Act. I find the weight of the evidence is that the landlord's stalking behaviour infringed the tenant's right to reasonable privacy and the knocking on his door late at night and uttering threats to him caused him unreasonable disturbance. I find his evidence was well supported by an eye witness. According to the Residential Tenancy Guideline, harassment is defined as "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome". I find the weight of the evidence supports the tenant's claim that the landlord's agent or manager, Y.N., was engaged in conduct that amounted to harassment and a breach of the quiet enjoyment of the tenant. This conduct appears to have mainly occurred since June 21, 2014 as it was not described in the previous hearing on that date and the tenant says it has now stopped. I find the tenant entitled to compensation of \$50 per month for three months for this breach of his peaceful enjoyment (total \$150).

**Conclusion:**

I dismiss the Application of the landlord without recovery of the filing fee but give them leave to reapply. I find the tenant entitled to compensation of \$150 for breach of his peaceful enjoyment for three months. No filing fee was involved.

**I HEREBY ORDER that the tenant may deduct \$150 from his rent for November 2014 as compensation for breach of his peaceful enjoyment by the landlord.**

**I HEREBY ORDER that the landlord allow access to the tenant's visitors within the hours set out in house rules.**

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 08, 2014

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Residential Tenancy Branch

