



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MNDC

### Introduction

This hearing was convened by conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant to cancel a notice to end tenancy for unpaid rent, and for a Monetary Order for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement.

Both parties appeared for the hearing and provided affirmed testimony. The Landlord confirmed receipt of the Tenant’s Application and the parties confirmed receipt of each other’s written evidence served to them prior to the hearing.

The hearing process was explained to the parties and parties understood and had no questions in relation to how the proceedings would be conducted. The parties were provided with a full opportunity to present evidence, make submissions to me and to cross examine each other on the evidence provided.

### Preliminary Issues

Both parties confirmed that the Tenant had vacated the rental suite on January 17, 2015. As a result, the Tenant’s request to cancel the notice to end tenancy is now a moot point as the tenancy has now ended. Therefore, I dismiss the Tenant’s Application to cancel the notice to end tenancy.

During the hearing, the Tenant requested the return of her security deposit from the Landlord as part of her monetary claim for compensation. The Landlord confirmed receipt of the Tenant’s forwarding address in writing before the ending of the tenancy. As the tenancy ended on January 17, 2015, I informed the parties that the time limit stipulated by Section 38(1) of the Act for the Landlord to make an Application to keep the Tenant’s security deposit had not expired. Therefore, this request was premature and could not be dealt with in this hearing.

### Issues to be Decided

Is the Tenant entitled to monetary compensation for her losses?

### Background and Evidence

The parties agreed that this tenancy started on September 18, 2014 on a month to month basis. The parties completed a written tenancy agreement and rent under the agreement was payable by the Tenant in the amount of \$1,060.00 on the first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$500.00 on September 18, 2014 which the Landlord still retains.

The Tenant alleged that during this tenancy the Landlord had entered her rental suite multiple times without providing proper written notice and that this was an invasion of her privacy. In addition, the Tenant claimed that the Landlord had also restricted essential services such as laundry and hot water and had imposed strict rules about noise and disturbance. This forced the Tenant to leave the tenancy and this constituted harassment. However, the Tenant confirmed that she had not addressed these issues with the Landlord in writing and had not given the Landlord an opportunity to rectify them.

The Tenant claimed that she had a verbal agreement with the Landlord that she could pay her rent on January 8, 2015 instead of January 1, 2015 when it was due under the tenancy agreement. The Tenant testified that the Landlord did not honour this agreement and as a result she received a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") on January 3, 2014 attached to her door. The Notice was provided in written evidence and shows an amount of \$1,060.00 outstanding for rent due on January 1, 2015 and has an effective vacancy date of January 12, 2015.

The Tenant testified that she did not have the funds to pay the Landlord rent and due to the tense and stressful situation created by the Landlord, she decided to move.

As a result, the Tenant now claims money for hardship of having to move out of the rental suite because of the 10 Day Notice. This comprised of costs for: hiring a storage unit to store her property during the move; lost wages for a day as a result of having to deal with the move out; additional accommodation for the remaining period of January 2015, gas for moving personal belongings out of the rental suite; mover's costs and the cost of putting down a security deposit on a new rental address. The Tenant made a

total claim of \$1,289.33 in written evidence. However, the amount claimed on the Application is only \$1,000.00.

The Tenant also requested the return of her sons' two bikes and a scooter which she valued at \$260.00 in total. The Tenant testified that she had left these at the rental suite after she had vacated it and that the Landlord was not returning them to her.

The Tenant confirmed that she had not paid rent for January 2015. However, the Tenant claimed \$45.00 for a nonsufficient funds fee which was charged by her bank as a result of the Landlord attempting to cash her January 2015 postdated cheque.

The Landlord disputed the Tenant's testimony and her monetary claim. The Landlord testified that the Tenant had provided her with postdated cheques in December 2014. This measure had been put in place because the Tenant paid her rent in cash but it was habitually being paid late.

The Landlord testified that on December 31, 2014, the Tenant explained that she did not have enough funds in her account to pay the rent for January 1, 2015 and the funds would not be in her account until January 9, 2015. The Landlord cautioned the Tenant that rent was due on January 1, 2015. The Landlord explained she issued the Tenant with the 10 Day Notice on January 2, 2015 and that this was evidence that no agreement had been reached for the Tenant to pay rent late as she habitually did this.

The Landlord testified that she got no contact from the Tenant and on January 10, 2015 she attempted to cash the Tenant's postdated cheque for January 2015 rent in an effort to get her rent money; however, the postdated cheque bounced on January 12, 2015.

The Landlord testified that she was notified by neighbours that the Tenant was vacating the rental suite on January 17, 2015. The Tenant returned a key for the rental unit and confirmed that she had removed all of her belongings and had no intention of returning because she knew the rules.

The Landlord testified that the Tenant returned to the suite the next day and it came to her attention that the Tenant still had one of the two keys provided to her at the start of the tenancy. The Landlord claimed that the Tenant had entered the suite in order to recover personal property. The Landlord asked the Tenant to leave because she had confirmed the day before that she had removed all of her belongings and that she would call the police as the Tenant was trespassing.

The Landlord testified that she had not questioned the Tenant about only returning one key as she was planning on changing the locks after the Tenant had vacated. However, she did not have time to do this.

The Landlord testified that the Tenant has abandoned a number of items at the rental suite including two children's bikes and the Tenant is welcome to collect these as they are at the front of the property and the Tenant does not need access to the inside of the rental suite. The Landlord explained that these had been left at the front of the property throughout the winter period by the Tenant and had not been touched by her.

### Analysis

When a party makes a claim for damage or loss under the Act, the burden of proof is on the Applicant to prove the existence of the loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the Respondent.

Section 26(1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the Tenant had a right under the Act to make a deduction or withhold rent.

In analyzing the Tenant's Application, I find that the Tenant's monetary claim mainly rests on the consequences resulting from the Tenant being served with the Notice, for which the Tenant now seeks relief.

The Tenant seeks to claim that the Landlord breached the Act because she was served with a Notice when there had been an oral agreement for her to pay rent later than the due date under the tenancy agreement.

The Landlord denied this oral agreement and testified that she made it clear to the Tenant that rent was payable by her on January 1, 2014. There was no agreement made in writing or consent given by the Landlord to pay her rent late. Therefore, I find that the Landlord was entitled to give the Tenant the Notice as this is a remedy provided to a landlord under the Act when a tenant fails to pay rent.

I find that when the Landlord served the Notice on January 2, 2015, this was sufficient to put the Tenant on notice that she was required to pay rent and had five days to make the payment.

If a tenant decides to accept the Notice and moves out in accordance with the Notice, this is not sufficient evidence that the Landlord should be held responsible for the resulting costs that a Tenant occurs as a result of vacating the rental suite.

In this case I find that there was no breach of the Act by the Landlord in issuing the Notice. Rather, the breach of the Act was committed by the Tenant when she failed to pay rent when it was due on January 1, 2014, and this still remains unpaid at the time of writing this decision.

Therefore, I find that the Tenant is not entitled to monetary compensation for moving costs or the costs she claims associated with the issuing of the Notice.

In relation to the allegations made by the Tenant regarding the invasion of her privacy and harassment claims, I find that the Tenant failed to provide sufficient evidence that the Landlord had pursued a course of vexatious comment or conduct that would give merit to the Tenant's claim. The Landlord denied the Tenant's allegations and I find that the seriousness of these claims would have required the Tenant to have supporting or corroborating evidence. Furthermore, the Tenant failed to seek resolution of these issues with the Landlord in writing and did not explore any of the remedies under the Act at the time these incidents are alleged to have occurred.

In relation to the insufficient funds fee charged to the Tenant by the her bank as a result of the Landlord's attempt to deposit the postdated cheque for January 2015, I find that the Landlord had a right to deposit the cheque in order to recover her rent. Again, under the Act, the Tenant is responsible for paying rent when it is due and I find that as the Tenant had indicated that she would not have funds in her account until January 8, 2015, the Landlord did not breach the Act by attempting to deposit the Tenant's cheque in an effort to recover unpaid rent.

Part 5 of the Residential Tenancy Regulation provides for situations where personal property has been abandoned as follows.

*24 (1) A landlord may consider that a tenant has abandoned personal property if*

*(a) the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended, or*

*(b) subject to subsection (2), the tenant leaves the personal property on residential property*

- (i) that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or*
  - (ii) from which the tenant has removed substantially all of his or her personal property.*
- (2) The landlord is entitled to consider the circumstances described in paragraph (1) (b) as abandonment only if*
  - (a) the landlord receives an express oral or written notice of the tenant's intention not to return to the residential property, or*
  - (b) the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property.*
- (3) If personal property is abandoned as described in subsections (1) and (2), the landlord may remove the personal property from the residential property, and on removal must deal with it in accordance with this Part.*
- (4) Subsection (3) does not apply if a landlord and tenant have made an express agreement to the contrary respecting the storage of personal property.*

### ***Landlord's obligations***

- 25** *(1) The landlord must*
- (a) store the tenant's personal property in a safe place and manner for a period of not less than 60 days following the date of removal,*
  - (b) keep a written inventory of the property,*
  - (c) keep particulars of the disposition of the property for 2 years following the date of disposition, and*
  - (d) advise a tenant or a tenant's representative who requests the information either that the property is stored or that it has been disposed of.*
- (2) Despite paragraph (1) (a), the landlord may dispose of the property in a commercially reasonable manner if the landlord reasonably believes that*

*(a) the property has a total market value of less than \$500,*

*(b) the cost of removing, storing and selling the property would be more than the proceeds of its sale, or*

*(c) the storage of the property would be unsanitary or unsafe.*

*(3) A court may, on application, determine the value of the property for the purposes of subsection (2).*

[Reproduced as written]

Based on the foregoing, I accept the Landlord's evidence that the Tenant returned the key to the Landlord on January 17, 2014 and confirmed that the rental suite had been vacated and that there was no intention to return to the rental suite. I also accept that as the property being claimed by the Tenant in this Application for the two bikes and the scooter were valued by the Tenant at less than \$500.00 in total.

Therefore, in accordance with the above regulations, the Landlord had no obligation to keep them and would have been at liberty to dispose of them. However, in this case, the Landlord confirmed that she still had two of the children's bikes and that the Tenant could collect them the day after this hearing.

### Conclusion

The Tenant failed to provide sufficient evidence to show that the Landlord had breached the Act and that she was entitled to monetary compensation. As a result, I dismiss the Tenants' Application without leave to re-apply.

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: January 29, 2015

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Residential Tenancy Branch

