



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, MNDC, OPT

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 47;
2. A Monetary Order for compensation - Section 67;
3. An Order of Possession - Section 54; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord, Owner and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Preliminary and Other Matters

At the outset of the hearing the Tenant stated that he was no longer in the rental unit as of March 19, 2015 and that he has no intention of returning to the unit. The Tenant withdraws the claim for a cancellation of the notice to end tenancy and the claim for the order of possession. Noting that the Tenant’s application was made on March 18, 2015, prior to the end of the tenancy, I dismiss the claim for the return of the security deposit with leave to reapply as this claim may only be made after a tenancy ends.

It is also noted that during the hearing the Landlord repeatedly interrupted the Tenant’s provision of evidence with derisive sounds and laughs. The Landlord had to be warned more than once in relation to this behavior. I also note that when the Landlord was given an opportunity to respond to the Tenant’s monetary amount claimed, the Landlord

derisively and arrogantly stated that the Tenant would not get any money from the Landlord regardless of the outcome of the hearing.

Issue(s) to be Decided

Is the Tenant entitled to the compensation claimed?

Background and Evidence

The following are undisputed facts: The Tenant pays \$450.00 per month for a room in a house that is shared by another person. A third person lives in the lower unit of the house. At the outset of the tenancy the Landlord collected \$225.00 for a security deposit. The Tenant paid the full rent for March 2015.

The Tenant states that after receiving a notice to end tenancy for cause, the Tenant served the Landlord with the Tenant's application to dispute the notice to end tenancy on September 18, 2015. The Tenant states that the following day he returned to the unit to find his belonging outside the locked gate. The Tenant had no key for the gate and was not able to enter the unit. The Tenant states that he paid \$50.00 to move his belongings in storage and \$100.00 for the cost of storage. The Tenant states that he is not claiming these costs as there are no receipts available. The Tenant claims the return of March 2015 rent and the equivalent of either two month's rent as compensation for the illegal eviction. The Tenant states that he does not currently have other rental accommodation.

The Landlord states that the Act does not apply to the Tenant's living accommodation as the Landlord and Owner share the bathroom and kitchen in the unit. The Landlord states that a third bedroom in the unit is kept as a guest suite for himself or the Owner when they are in town. The Landlord states that both he and the Owner both will share the guestroom when they are both at the unit, which the Landlord states does not happen often as each of them have their own residences elsewhere. The Landlord states that the Owner lives down the road from the rental unit. The Landlord states that a trailer outside the unit is also used by the Landlord to stay while in town. The

Landlord states that he had the right to lock the Tenant out as he was noisy and causing problems. The Landlord states that the Residential tenancy Branch told him that the Tenant had no claim against him as the accommodation does not fall under the Act.

The Tenant states that the extra bedroom in the unit is empty, that neither Landlord has ever stayed in the unit and that the one Landlord stays only in the trailer when in town.

### Analysis

Section 4 of the Act provides that the Act does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation. Given the Landlord's and Owner's evidence of other residences, considering the Tenant's believable evidence that the third bedroom is vacant and considering the Landlord's and the Tenant's evidence of the Landlord staying in the trailer, I find on a balance of probabilities that the Tenant does not share the a bathroom and kitchen with the owner. As a result I find that the Act applies to the tenancy.

Section 44 of the Act provides that a tenancy ends only where, inter alia, either the landlord or tenant gives notice to end the tenancy. Section 47 provides that a tenant may dispute a notice to end tenancy for cause within 10 days receipt of the notice. When a notice to end tenancy is disputed, the validity of a notice and the Landlord's right to possession of the unit is determined at a hearing. Nothing in the Act allows a landlord to arbitrarily end a tenancy. Based on the undisputed evidence that the Tenant was locked out of the unit and noting that the Landlord has neither an order of possession or a writ of possession for the unit, I find that the Tenant has substantiated that the Landlord breach the Act.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. Based on the undisputed evidence that the Landlord failed to comply with the Act in ending the tenancy and considering that the Tenant was not able to use the unit for the period march 19 to March 30, 2015 although rent was paid for this

period, I find that the Tenant is entitled to compensation equivalent to this time period in the amount of **\$180.00** (per diem rate of \$15 per day x 12 days). As the Tenant has use of the unit prior to March 19, 2015 I dismiss the Tenant's claim for this portion of the rent paid. Given the egregious nature of the Landlord's act in ending the tenancy without right, considering that the Landlord continued to act in an arrogant manner during the hearing showing a similar level of contempt and derision for the Tenant, the Tenant's rights and these proceedings, and considering the tremendous impact the Landlord's actions in locking the Tenant out would reasonably have had on the Tenant, I find that the Tenant has substantiated its claim for compensation in the equivalent amount of two month's rent or **\$900.00** for a total entitlement of **\$1,080.00**.

#### Conclusion

I grant the Tenant an order under Section 67 of the Act **\$1,080.00**. If necessary, this order may be filed in the Small Claims Court and enforced 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: April 23, 2015

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Residential Tenancy Branch

