



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            OPT, OLC, MNDC, FF

### Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the Residential Tenancy Act ("Act"). The tenant applied for an order of possession for the rental unit, for an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, for a monetary order for money owed or compensation for damage or loss, and for recovery of the filing fee paid for this application.

The tenant and landlord's agent (hereafter "landlord") attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, the landlord confirmed receiving the tenant's evidence and the landlord also confirmed not sending the tenant the landlord's photographic evidence. I have therefore excluded the landlord's photographic evidence; however, I found that the photographs were of no relevance to the issues contained in the tenant's application.

Thereafter both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

*Preliminary matter*-The tenant submitted that he no longer wanted to move back into the rental unit and that he only wanted access to the rental unit to retrieve his personal property; as a result, I excluded the tenant's request for an order of possession for the rental unit and amended his application pursuant to section 64(3)(c) of the Act, to include a request for an order requiring the landlord to return the tenant's personal possessions.

### Issue(s) to be Decided

Is the tenant entitled to an order requiring the landlord to comply with the Act, for an order requiring the landlord to return the tenant's personal property, monetary compensation, and to recovery of the filing fee paid for this application?

### Background and Evidence

The undisputed testimony of the tenant was that the tenancy began on February 2014, monthly rent was \$450.00, payable on the first day of the month, and that he paid no security deposit.

In support of his application, the tenant submitted that he returned to his rental unit on or about April 23, 2015, after being in the hospital, and discovered that the locks had been changed by the landlord. The tenant submitted further that he was suddenly homeless and had no access to his personal property, as the landlord refused access to the rental unit. As he did not have access to the rental unit, the tenant submitted that he was required to obtain a hotel room until he could begin to stay with friends.

The tenant's monetary claim is \$700.00 for hotel expenses for a week. The tenant submitted a receipt for a hotel stay of 7 nights, beginning April 26, 2015, in the amount of \$663.50.

#### *Landlord's response-*

The landlord confirmed that he had changed the locks to the rental unit, as he had "had enough" with the tenant not paying rent for 5 months. The landlord submitted further that he had issued the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on April 13, 2015, with a copy submitted into evidence.

I note that both parties submitted a copy of the landlord's letter to the tenant, dated April 23, 2015, which informed the tenant that locks had been changed and that the tenant would not be given access to the rental unit unless he paid a portion of the unpaid rent.

After a discussion surrounding the tenant's personal property, a settlement was reached as to the time and date the tenant would retrieve his personal property. After this settlement, the remaining issue pertained to the tenant's monetary claim.

### Analysis

#### ***Settled Agreement-***

The parties agree that the tenant will have unfettered access to the rental unit, free from interference, on Saturday, May 30, 2015, between 11:00 a.m. and 4:00 p.m. in order to remove all his belongings and personal property.

This settlement agreement was reached in accordance with section 63 of the *Residential Tenancy Act*. The parties are bound by the terms of this agreement, as well as by the terms of their tenancy agreement and the Act. Should either party violate the terms of this settled

agreement, the tenancy agreement or the Act, it is open to the other party to take steps under the Act to seek remedy.

***Tenant's monetary claim-***

As to the remaining issue, a tenancy remains in effect until such time it ends under section 44 of the Act. In order for the landlord to have ended the tenancy for unpaid rent, the landlord would have had to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, as was the case here, and allow the tenant the opportunity to pay the outstanding rent five days after receiving such a Notice.

If the tenant then fails to pay the rent or vacate, the landlord may apply to the Residential Tenancy Branch ("RTB") for an order of possession for the rental unit, which is enforceable in the Supreme Court of British Columbia.

In this case I find, rather than file for dispute resolution to obtain an order of possession for the rental unit, the landlord instead illegally changed the locks to the rental unit, in violation of section 31(1) of the Act, preventing the tenant from having any further access to the rental unit.

Section 28 of the Act states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy, freedom from unreasonable disturbance, and exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 of the Act, which is in the case of emergency repairs. In this case, I find the undisputed evidence shows that the landlord deprived the tenant of exclusive possession of the rental unit when the landlord illegally changed the locks to the rental unit, refusing further access.

Section 16 of the Residential Tenancy Branch Policy Guideline states that if a claim is made by the tenant for loss of quiet enjoyment, the arbitrator may consider the following criteria in determining the amount of damages:

- *the amount of disruption suffered by the tenant.*
- *the reason for the disruption.*
- *if there was any benefit to the tenant for the disruption.*
- *whether or not the landlord made his or her best efforts to minimize any disruptions to the tenant.*

In this case, due to the illegal lock change by the landlord and his refusal to allow the tenant back into the rental unit to retrieve his personal property, I find the tenant's claim to be reimbursed for a hotel stay of 7 days until he could find alternate accommodations with friends to be reasonable. I therefore find the tenant is entitled to a monetary award of \$633.50 for loss

of quiet enjoyment, exclusive use of the rental unit, and his personal property, the amount of his hotel bill for 7 days.

I also find the tenant is entitled to reimbursement of his filing fee of \$50.00 paid for his application, pursuant to section 72(1) of the Act.

Due to the above, I find the tenant is entitled to a total monetary award of \$713.50, comprised of \$663.50 for his hotel stay and the filing fee of \$50.00.

I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$713.50, which is enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay, the monetary order may be served on the landlord and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

#### Conclusion

The parties reached a settlement as to the tenant's retrieval of his personal property, as recorded above.

The tenant's application for monetary compensation is granted.

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: May 22, 2015

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Residential Tenancy Branch

