



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding KS & SY Hung Holdings Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

Tenant's application: CNE, CNC, MNDC, MNSD, RPP, LRE, AS, FF, O  
Landlord's application: MND, MNSD, FF, O

### Introduction

This was a hearing with respect to applications by the tenant and by the landlord. The hearing was conducted by conference call. The tenant and the named representatives of the landlord called in and participated in the hearing.

### Issue(s) to be Decided

Is the tenant entitled to any of the relief claimed in her application?  
Is the landlord entitled to an order for possession?  
Is the landlord entitled to a monetary award and if so, in what amount?

### Background and Evidence

The tenant resides in an apartment in the rental property, but not in the unit that is the subject of this application. The tenant filed her application on April 14, 2015. She applied to cancel several Notices to End Tenancy, but she did not provide copies of any of them. The tenant did not provide proof that she served the landlord with her application for dispute resolution. In her application she said that:

I am seeking damages as (name of landlord) has forced me out of my apt (number) as I rent it to students and use it for a second place to stay if I have a fight with my boyfriend. The other 3 rooms I use as a rental.

On or about May 11, 2015 the tenant attended at the Residential Tenancy Branch and purported to amend her application by changing the address of the rental unit named in the application to an entirely different address at another apartment building located in Vancouver and owned by the landlord. The tenant did not provide proof that she served the amended application. She said at the hearing that she changed the address of the

rental unit, because since she filed her original application, she no longer wanted to pursue her original dispute with respect to the rental unit named in her application because she now has a new conflict with the landlord concerning a different rental property. Instead of filing an application for dispute resolution to proceed with a new dispute, she attempted to change the dispute address stated in her original application.

The landlord's representatives testified that they were unaware of the supposed amendment to change the dispute address. The landlord filed its application concerning the original dispute address and it has been joined as a cross application to the tenant's original application.

The landlord said in its application that it was seeking an order for possession and a monetary award in the amount of \$3,775.00.

The tenant said at the hearing that she resides in a unit at the rental property, not the unit named in the landlord's application. She testified that she made an agreement with the former owner of the rental property to assist him to remove some troublesome tenants from the rental property and to find new tenants to live in several units. The tenant said that she entered into a business agreement to rent several units in the building and in another property, in addition to the unit she occupied so that she could engage in the business of furnishing and improving those units and then sublet them to students. The tenant complained that the landlord has interfered with her contractual relations with her tenants by entering into new tenancy agreement with her former tenants.

The landlord submitted evidence that in December 2014 it signed a tenancy agreement with the occupants of the rental unit. The tenancy with the landlord was to commence on January 1, 2015 and as of January 1<sup>st</sup> 2015 the tenants named in the agreement commenced to pay rent to the landlord and occupied the rental unit pursuant to the agreement with the landlord. On February 7, 2015 the landlord changed the locks to the rental unit and provided the occupants with keys to the new locks. The tenant was not given a key to the unit. The occupants paid rent to the landlord and occupied the rental unit until April 30, 2015. In April the landlord signed a tenancy agreement with new tenants for a tenancy to commence May 1, 2015. The landlord has claimed that it told the tenant that she must move her furnishings and perform repairs and cleaning to the rental unit by May 1, 2015.

The landlord claimed for the costs of removing and storing the tenant's belongings and for loss of rental income because the prospective tenants did not move into the rental unit and the tenancy agreement was cancelled by mutual agreement. The landlord submitted a price statement from a storage firm giving the monthly fees for renting

different sizes of storage units. The landlord did not submit any invoice for costs actually incurred for storage.

### Analysis

Dealing first with the tenant's application, she purported to amend her application to raise a claim with respect to a different rental unit from the one named in the application. This was not done to correct an error or misspelling or to add to or change her claim and it is therefore not a proper amendment since it purports to advance a claim concerning a different rental unit and tenancy. The tenant has abandoned her claim with respect to the rental unit; the claim that is made is not a proper amendment and her application with respect to the rental unit that is the subject of this proceeding is dismissed without leave to reapply.

Turning to the landlord's application, I was initially of the view that this dispute fell outside the jurisdiction of the *Residential Tenancy Act* because the rental unit was apparently rented to the tenant for business purposes and not as a residential tenancy, however, I have considered the decision of the Supreme Court of B.C. in *Henricks v Hebert*, (1998) BCSC , 1998 CanLII 1909, and I accept the reasoning therein which, briefly stated, found that that despite the commercial nature of the relationship between the parties the Act applied because the premises were used for residential purposes.

If I accept that there was a tenancy agreement between the landlord and the tenant that was subject to the *Residential Tenancy Act*, it ended on January 1, 2015 when landlord's tenancy agreement with the occupants took effect and the landlord granted exclusive possession of the rental unit and its contents to the occupants. The landlord did not perform a condition inspection or identify the contents of the rental unit before entering into the new tenancy agreement.

The landlord has claimed for the costs of removing and storing belongings said to be the tenant's property, but the landlord has not provided evidence that it has actually stored any goods or expended any amounts for storage. The landlord has requested an order for possession although it created a tenancy agreement with the occupants of the rental unit that commenced in January. The landlord appears to suggest that the tenant continued to have some rights of occupancy that persisted through the tenancy created by the landlord. I consider that the tenancy with the respondent was ended by the landlord, but that the landlord failed to properly mitigate its damages after it signed the agreement with the occupants, by failing to perform a condition inspection and by failing to require the respondent to remove all of her furniture and belongings from the rental unit before the commencement of the new tenancy. The landlord acted inconsistently and took the benefit of entering into a new tenancy agreement with the occupants so

that it could collect rent direct from them, without doing all the things necessary to formally end the respondent's tenancy.

After the occupants moved out the tenant appears to have asserted some right of possession to the rental unit by seeking to sublet it. Because the tenant has purported to have a possessory right to the rental unit after the occupants vacated and because she apparently has personal goods in the rental unit, I find that the landlord is entitled to an order for possession effective two days after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that court. If the tenant's goods remain in the rental unit the landlord will have to deal with them in accordance with the *Residential Tenancy Act* and Regulation.

The landlord's application for a monetary award for loss of rent for May and June is dismissed without leave to reapply because the landlord failed to mitigate its damages by taking proper steps to end this tenancy before entering into a new tenancy agreement with the occupants. The landlord's claim for moving, storage and cleaning costs are dismissed with leave to reapply. The landlord has liberty to advance a claim for future loss of rental income if there are grounds for such a claim.

### Conclusion

The tenant's application has been dismissed without leave to reapply. The landlord has been granted an order for possession. Its claim for a monetary award has been dismissed, without leave with respect to rent claimed for May and June and with leave as to claims for moving storage, repairs and possible future loss of rental income.

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: June 22, 2015

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Residential Tenancy Branch

