



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF, MNDC, CNC, O

### Introduction

This is an application brought by the tenant requesting a monetary order in the amount of \$9445.46, and requesting an order canceling a Notice to End Tenancy; however by the date of the hearing the tenant had already vacated the rental unit.

A substantial amount of documentary evidence, digital evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

Both parties were affirmed.

### Issue(s) to be Decided

The tenant has already vacated the rental unit and therefore no order is required canceling a Notice to End Tenancy, therefore the remaining issue is whether or not the applicant has established monetary claim against the respondent and if so in what amount.

### Background and Evidence

A security deposit of \$475.00 was paid on March 10, 2015 and the tenancy began on April 1, 2015, with a monthly rent of \$950.00, due on the first of the month.

The applicant/tenant is alleging a breach of a material term of the tenancy agreement stating that the landlord wrongfully granted her permission to use the neighbour's property to access her entrance.

The applicant further states that the area across the neighbours property was the only reasonable access to the rental unit as all other access was down steep stairs that made it virtually impossible to bring her belongings in and out of the rental property.

The applicant further states that the neighbours, over whose property the landlord had granted her access, first put up the no trespassing sign and then put a fence across the access area making it impossible for her to bring her belongings through the only reasonable access.

The applicant further states that the landlord refused to intervene on her behalf to ensure that access was allowed.

The applicant further states that the landlords called the RCMP in an attempt to frame her and make her look bad, and then on April 19, 2015 an eviction notice was posted on her door. She initially filed a dispute of the Notice to End Tenancy, along with the monetary claim; however due to the aggressive nature of the landlords and neighbours, she felt unsafe and therefore was forced to move out.

The applicant further states that the landlord also failed to provide the unit in clean condition and as a result she had 4 hours of cleaning. She has provided photo evidence to show the condition in which the rental unit was left.

The applicant is also alleging that the landlord came into her rental unit and removed the no trespassing sign and closed some heating ducts without getting permission to enter the rental unit.

The applicant is therefore requesting a monetary order as follows:

Return of full security deposit	\$475.00
Return of April 2015 rent	\$950.00
Cost of wagon she purchased for moving	\$86.23
Wages from lost vacation time	\$578.32
Registered mail	\$10.00
Storage locker	\$187.85
3 USB sticks	\$23.49
Cost of having to eat out	\$122.35

Cost for truck and movers	\$778.89
Moving boxes	\$67.33
Compensation for breach of a material term	\$5000.00
Cost of second move	\$516.00
Estimated cost of storage	\$650.00
Filing fee	\$50.00
Total	\$9495.46

The respondent testified that when the tenant came to move into the rental unit she was given the access places, the stairway, her suite, and over the grass, and she also informed the tenant that she could not bring vehicles over the lawn as a previous tenant had done so and upset the other owners.

The respondent further stated that she never told the tenant that she could have access through the neighbours property, that tenant told her she would speak to the neighbours and request that she have access through their property.

The respondent further stated that she thought there would be no problem with the tenant moving in however on April 19 the North side neighbours informed her that they saw a vehicle driving on the grass and therefore she texted and phone the tenant reminding her of no vehicles.

The respondent further stated that that evening she received a 14 min. phone call from a very aggressive tenant using foul language and demanding her money back. She did not know why the tenant was being so aggressive however the tenant was hysterical and would not listen, threatened to rip off my face and the neighbour's faces.

The respondent further states that the next morning she arranged to see the tenant however again the tenant got hostile and therefore they left stating that all communication from now on should be by text. When they left they went to visit the neighbour who stated that the tenant had come on their property without asking their permission and had even had a car down there, and they therefore put up a fence to block access across their property.

The respondent further testified that the tenant came, knocked down the fence, knocked over the neighbours wife, and was hysterical and violent and that that's why the police and ambulance were called, it was not an attempt to frame the tenant.

The respondent further testified that the next night the tenant pounded on their door accusing them of coming into her suite and they had to call the police again at 11 PM as the tenant was getting so aggressive.

The respondent further stated that at all times they have treated the tenant with respect and that it was the tenant that was acting aggressively.

The respondent therefore believes that the tenant's full claim should be dismissed.

### Analysis

The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met.

In this case it is my finding that the applicant has not met the burden of proving her claim that the landlord breached a material term of the tenancy agreement.

The tenant claims that the landlord wrongfully granted her permission to use the neighbour's property to access her rental suite; however the landlord denies granting permission and stated that the tenant had told her she would ask the neighbours permission.

The tenant alleges that the landlord and the neighbours acted in an aggressive manner towards her and as a result she was forced to move out of the rental unit; however again the landlord denies those claims and has stated that it was the tenant that acted in the aggressive and even violent manner.

The tenant claims that there was only one reasonable access to this rental unit and that all other access was too difficult; however the tenant's own video evidence shows that there was access down the stairs on the side of the house, and although it may have been more difficult than bringing the wagon across the grass it's my finding it was still reasonable access.

The tenant also alleges that the landlord entered her rental unit without permission; however again, there is insufficient evidence to meet the burden of proving this claim. The tenant claims that her no-trespassing sign was moved; however there is no proof that the sign was moved by the landlord.

Again, as stated above, when there is conflicting evidence, the applicant has the burden of proving their claim, and since, in this case, it is just the applicant's word against that of the respondent the applicant has not met the burden of proving her claims.

Further, although the tenant has shown that the rental unit was in need of some cleaning when she got possession it's my finding that the condition was not sufficiently dire to be considered a breach of a material term of the tenancy agreement.

Also the tenants claim for the return of her security deposit is premature because the tenant testified that she has not given the landlord a forwarding address in writing and, pursuant to Section 39 of the Residential Tenancy Residential Tenancy Act, the landlord is not required to return the security deposit until a forwarding address in writing has been given.

### Conclusion

The tenants claim for the return of her security deposit is dismissed with leave to reapply after providing the landlord with a forwarding address in writing.

The remainder of the tenants claim is dismissed without leave to reapply.

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: August 18, 2015

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Residential Tenancy Branch

