



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF, CNR, MNDC, LRE

### Introduction

This hearing dealt with applications by both parties. The landlord applied for an order of possession and a monetary order while the tenant applied for an order setting aside a notice to end this tenancy, a monetary order and an order restricting the landlord's right to enter the unit. Both parties participated in the conference call hearing.

At the hearing, the parties agreed that the tenant vacated the rental unit on August 1, 2015. As the issue of possession of the rental unit is now moot, I consider the claims for an order of possession and an order setting aside the notice to end tenancy to have been withdrawn.

### Issues to be Decided

Is the landlord entitled to a monetary order as claimed?

Is the tenant entitled to a monetary order as claimed?

### Background and Evidence

The parties agreed that the tenancy began in October 2014, that the tenant was responsible to pay \$770.00 per month in rent and that the tenant did not pay a security deposit. They further agreed that on June 16, the landlord served the tenant with a 10 day notice to end tenancy for unpaid rent, which was originally to be the subject of this hearing. They further agreed that on July 1, the landlord and several others packaged and moved much of the tenant's belongings from the rental unit into the carport and that the police were summoned and advised the landlord at that time that she was not permitted to move the tenant's belongings from the unit.

The tenant seeks an award of almost \$25,000.00, claiming that most of her possessions were damaged when the landlord moved her belongings. She provided several photographs showing her items outside the unit, some of which show marks on her

couch and another showing broken pieces of a dish. She provided a videotape showing the landlord and other parties packaging and moving her belongings as well as an itemized list of items she claims were damaged and their purported replacement value. The tenant testified that when the police arrived on July 1 and stopped the landlord from removing her items, the police asked the tenant if she wanted to move her items back into the unit herself or whether the landlord should do it. The tenant advised the police that she did not want the landlord to touch her possessions and said she would move the items back inside. The tenant claimed that she moved most of the items back inside the same day while some smaller items were not brought in the unit until a few days later.

The landlord agreed that she broke a teacup but otherwise denied having broken or damaged any of the tenant's items. She testified that when the police arrived she offered to move items back into the unit but was told not to touch them. The landlord claimed that if any other items were damaged, the damage must have occurred when the tenant moved the items or when they were left in the carport for several days. The landlord provided photographs of the tenant's belongings which she took when she was showing the unit on a later date and noted that the items were not damaged.

The landlord testified that the tenant failed to pay \$300.00 of her rent for June and paid no rent whatsoever for July or August. She testified that the tenant failed to adequately clean the unit at the end of the tenancy and therefore the landlord has not yet been able to re-rent the unit. The landlord seeks an award of unpaid rent for June as well as loss of income for July and August.

The tenant claimed that she owes only \$200.00 for June. The parties agreed that the tenant usually pays her rent in cash and that the landlord never provides receipts for cash payments. The tenant claimed that she should be relieved of her obligation to pay rent for July because her home was in disarray after the landlord had packaged and removed her belongings and because she didn't want to bother unpacking because she was looking for a new home and knew she would move soon, she did not re-organize her home and found it to be unliveable during July.

### Analysis

There is no question that the landlord acted illegally in removing the tenant's belongings from the rental unit. Section 57(2) of the Act provides as follows

- 57(2) The landlord must not take actual possession of a rental unit that is occupied by an overholding tenant unless the landlord has a writ of possession issued under the Supreme Court Rules.

The landlord did not obtain an order of possession, which would have been required before she could obtain a writ of possession through the Supreme Court. The landlord had no right to remove the tenant's belongings.

Although the landlord's actions were in direct contravention of the Act, there is no penalty under the Act for a breach of this provision. The tenant has claimed that her belongings were broken or damaged, but other than her verbal testimony, she has not provided proof to corroborate her claim that these items were damaged. The provided photographs of the couch showing some damage, but I am not satisfied on the evidence that the landlord actually caused that damage. The tenant's video shows the landlord handling her furniture with care and I am unable to find that the landlord damaged anything except for the teacup which she acknowledged having broken. Further, the landlord's photographs appear to show the items in an undamaged state. I find that the tenant is entitled to \$5.00 in compensation for the broken teacup and I award her that sum.

The landlord claimed that the tenant owes \$300.00 for June's rent, but the tenant claims that she owes only \$200.00. As the landlord has refused to give the tenant receipts for cash payments in contravention of section 26(2) of the Act, she has deprived the tenant of the ability to prove how much rent was paid. I therefore accept the tenant's testimony and find that the tenant owes just \$200.00 for the month of June and I award the landlord that sum.

The tenant continued to occupy the rental unit in the month of July but did not pay rent. Ordinarily, I would award the landlord rent for a month in which the tenant occupied the unit. However, in these circumstances, the landlord acted in complete disregard for the law when she packed and removed the tenant's belongings from the rental unit and I find that as a result of her actions, the tenant was placed in a position in which she had to unpack and re-organize her belongings in the rental unit in order to continue to experience quiet enjoyment until such time as the landlord could obtain an order of possession. The tenant chose not to unpack her belongings because she was intending to move and therefore did not have to live in an unorganized unit for the entire month of July as she claimed. I find that for the first two weeks of July, the impact of the landlord's illegal actions was so significant that the tenant should be relieved of rent for that period. I find that the landlord is entitled to an award for lost income for the last half of July and I award her \$385. The tenant occupied the unit on August 1 and did not dispute that she left the unit in an unclean condition. I find that the landlord could not have re-rented the unit for the first part of August due to the tenant having occupied the unit for part of a new rental period and having failed to clean the unit. I award the landlord \$385.00 in lost income for the first half of August. I dismiss the landlord's claim

for lost income for the second half of August as I see no reason why the landlord could not have cleaned and advertised the unit during the first half of August.

The landlord also asked for an order for the \$385.00 security deposit she requested of the tenant at the outset of the tenancy. The security deposit is designed to be held in trust during the tenancy and is not awarded when the tenancy is over as it is an amount held for the benefit of the tenant. I dismiss the claim for an award equivalent to what the security deposit should have been.

As the landlord has been substantially successful in her claim, I find she should recover the \$50.00 filing fee and I award her that sum for a total entitlement of \$1,020.00 (\$200.00 rent for June, \$385.00 lost income for July, \$385.00 lost income for August, \$50.00 filing fee).

The landlord has been awarded \$1,020.00 and the tenant has been awarded \$5.00. Setting off these awards as against each other leaves a balance owing by the tenant to the landlord of \$1,015.00. I grant the landlord a monetary order for that sum. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

### Conclusion

The landlord is granted a monetary order for \$1,015.00.

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 17, 2015

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Residential Tenancy Branch

