



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BRANDIZ HOTEL and MAN KEI ENTERPRISES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, LRE, AAT, LAT

### Introduction

This hearing was scheduled to deal with a tenant's application for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement; and, orders to set conditions on the landlord's right to enter the rental unit; orders to allow the tenant or her guests access to the rental unit; and, authorization for the tenant to change the locks. The tenant subsequently filed an amended application to increase her monetary claim against the landlord. The landlord or a representative for the landlord did not appear at the hearing.

JR testified that he personally served the male owner of the property with the tenant's original application and evidence in the lobby of the property on September 17, 2015. JR testified that he personally served a staff person at the front desk of the property with the tenant's amended application and evidence on September 28, 2015. JR confirmed that all documents submitted to the Residential Tenancy Branch were served upon the landlord on these two dates. I noted that the landlord had submitted documents to the Residential Tenancy Branch in response to the tenant's application. Therefore, I was satisfied that the landlords were served with the tenant's hearing documents.

One document was addressed to the tenant appeared to be an invitation to settle the dispute. Another document indicated the landlord was seeking to reschedule the hearing, claiming they would be on "holidays" for which they have incurred non-refundable expenses. The landlord also provided a copy of a 10 Day Notice to End Tenancy for Unpaid Rent. The tenant acknowledged that the landlord served her with these documents. The tenant stated that a settlement was attempted but not achieved. JR also stated that he asked the landlord to provide verification to demonstrate they would be on vacation but the landlord refused to provide any. JR also pointed out that the teleconference call hearing can be accessed by any telephone regardless of the location of the party calling into the hearing. The tenant stated she did not consent to rescheduling or adjourning the hearing and she wished to proceed as scheduled.

The Rules of Procedure provide for ways a hearing may be rescheduled. One way is to obtain the consent of the other party; however, consent was not obtained in this case. The Rules of Procedure also provide for the way a rescheduling may be achieved if consent is not obtained from the other party. Rule 6.2 provides:

**6.2 If consent to rescheduling the dispute resolution proceeding cannot be obtained**

If a party wants to request that a dispute resolution proceeding be rescheduled to another date because that party will be unable to attend the dispute resolution proceeding due to circumstances beyond his or her control, and if the opposing party does not consent to rescheduling the dispute resolution proceeding, the dispute resolution proceeding must commence at the scheduled time and the party requesting the adjournment can ask the arbitrator to reschedule the dispute resolution proceeding by:

- a) submitting to the Residential Tenancy Branch, at least 3 business days before the dispute resolution proceeding, a document requesting that the dispute resolution proceeding be rescheduled and setting out the circumstances that are beyond the party's control that will prevent him or her from attending the dispute resolution proceeding; or
- b) having an agent represent him or her attend the dispute resolution proceeding to make a request to the arbitrator to reschedule the dispute resolution proceeding and to describe the circumstances that are beyond the party's control that will prevent him or her from attending the dispute resolution proceeding.

The landlord submitted a document at least 3 days before the hearing requesting a rescheduling on the basis the landlords would be on a vacation. The landlords; however, did not provide any documentation to substantiate their submissions, such as an itinerary or plane tickets; they did not otherwise indicate their destination; or, provide any indication that telephones would not be available to them at the time of the hearing. As pointed out by JR the teleconference call can be accessed from any telephone world-wide.

In the circumstances before me, I found the landlords did not sufficiently set out that circumstances beyond their control would prevent them from attending the scheduled hearing. Therefore, I proceeded to hear the tenant's application.

The tenant confirmed that she no longer resides at the property and she withdrew her requests for remedies other than the Monetary Order. As such, I continued to hear the tenant's monetary claims against the landlords, as amended.

The tenant requested the application be amended to identify the landlord as described by the landlord in their correspondence and on the 10 Day Notice the landlord issued. I was satisfied the landlord operates under two names and I amended the application accordingly.

#### Issue(s) to be Decided

Is the tenant entitled to compensation requested for damage or loss under the Act, regulations or tenancy agreement?

#### Background and Evidence

The subject rental unit is a room in a hotel located in the downtown eastside of the city. On August 31, 2015 the tenant paid \$450.00 for rent for the room for a fixed term of one month. I was provided a copy of a receipt for the payment of rent and a document that appears to an addendum to a tenancy agreement that was signed by the tenant on August 31, 2015, but I was not provided a copy of a tenancy agreement that would comply with the requirements of the Act. The tenant occupied the room starting September 1, 2015 and expected to reside in the room until September 30, 2015 when she would vacate. The tenant submitted that a security deposit was not required or paid.

On September 14, 2015 the tenant filed her original application indicating the landlord misrepresented the rental unit as being free of bed bugs; however, the tenant discovered bed bugs in the unit which, in her submission, rendered the unit uninhabitable. The tenant also submitted that the landlord was violating the Act in other ways by restricting her guests the ability to access to the rental unit. The tenant requested compensation of \$450.00. That application was served upon the landlord on September 17, 2015. The tenant testified that on September 17, 2015, after the tenant's application was served upon the landlord, the female landlord began yelling at the tenant. The tenant left the property and when she returned on September 19, 2015 she was informed by the front desk staff that the locks to her room had been changed and that her possessions were behind the front counter. The tenant returned to the property a short time later on September 19, 2015 to find her possessions in two garbage bags in the lobby and unattended. The tenant went through the bags and

found a 10 Day Notice to End Tenancy for Unpaid Rent indicating she failed to pay rent of \$225.00 that was due on September 1, 2015.

The tenant testified that she had not been served with the 10 Day Notice prior to finding it in the garbage bag. The tenant also testified that some of her possessions were missing. The tenant proceeded to amend her application to seek further compensation of \$300.00 for the missing items which she described as being: a child's bicycle, clothing, and food. The tenant testified that she purchased the bicycle new in May 2015 with money she earned while prawn fishing and that it cost approximately \$200.00.

### Analysis

The Act applies to tenancy agreements between a landlord and a tenancy with respect to use and possession of residential property. The Act defines a tenancy agreement to include agreements that are entered into orally or in writing and includes a right to occupy. The Act applies to tenancy agreements unless a tenancy is specifically excluded from the Act pursuant to section 4. As such, a tenancy may form for hotel style rooms. In this case, I am satisfied the parties formed a tenancy agreement when rent was paid on August 31, 2015 as I was not presented evidence to suggest this tenancy was exempt from the Act.

The addendum provided to me appears to indicate that a security deposit would be required; however, the amount was not specified. In any event, non-payment of a security deposit is not a basis for issuing a 10 Day Notice. Rather, where a tenant fails to pay a required security deposit, the landlord's remedy is to issue a 1 Month Notice to End Tenancy for Cause. It would appear the landlord in this case may have attempted to end the tenancy for an unpaid security deposit by way of using a 10 Day Notice, which is incorrect and would not be a permissible way to end the tenancy.

Even if a tenancy has ended and the tenant is over-holding, under section 57 of the Act, a landlord is prohibited from taking possession of a rental unit from a tenant unless the landlord has obtained a Writ of Possession for the rental unit. Taking possession includes removing the tenant's possessions and/or changing the locks.

In this case, I was not provided any evidence to demonstrate the landlord had obtained a Writ of Possession with respect to this tenancy and I accept the tenant's undisputed submissions that the landlord took possession of the rental unit from her between September 17, 2015 when she was last in the unit and September 19, 2015 when she returned to the property.

The tenant requested compensation equivalent to the amount of rent she paid for the month of September 2015. In filing her original application the tenant submitted that the rental unit was uninhabitable and the landlord was violating the Act with respect to guests and visitors; however, the tenant testified at the hearing that she did use the unit until September 17, 2015 before the landlord took possession away from her. Although the tenant's use and enjoyment of the unit may have been diminished due to bed bugs and restricted access for her guests I find the tenant did not sufficiently establish that the tenancy was devalued 100% when I consider she used the unit until September 17, 2015. However, I am satisfied that the tenant paid for use and occupancy for days after the landlord illegally took possession of the rental unit and I find it appropriate to award her compensation for those days. Therefore, I award the tenant the equivalent of rent paid for the days of September 17, 2015 through September 30, 2015 which I calculate to be \$210.00 ( $\$450.00 \times 14/30$  days).

Aside from the illegal removal of the tenant's possession from the rental unit, I find the landlord further acted egregiously by not taking an inventory the tenant's belongings that were removed from the rental unit and failing to keep her possession in a secured location. Therefore, I find the tenant's undisputed submission that some of her possessions were missing on September 19, 2015 to be reasonably likely and I accept that the loss is a result of the landlord's violations of the Act and negligence. The tenant's estimated value of the missing possessions was undisputed by the landlord and I find the estimate to be reasonable. Therefore, I grant the tenant's request to recover \$300.00 for loss of personal property from the landlord.

In light of the above, I provide the tenant with a Monetary Order in the amount of \$510.00 to serve and enforce upon the landlord.

### Conclusion

The tenant has been provided a Monetary Order in the amount of \$510.00 to serve and enforce upon the landlord as necessary.

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: October 23, 2015

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Residential Tenancy Branch

