



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: OPL FF

### **Introduction:**

This hearing was convened to deal with applications by both the landlord and tenant pursuant to the *Residential Tenancy Act* (the Act) in respect to entitlement to an Order of Possession for a new purchaser/ landlord's use of the property pursuant to sections 49 and 55 and compensation to the new owner/landlord for losses sustained due to the tenant over holding. The tenant requests compensation for alleged harassment by the landlord and breach of the tenant's peaceful enjoyment contrary to section 28 of the Act. Both parties request costs of the filing fee also.

There was dispute about the date of service of the Notice to End Tenancy. It is dated July 30, 2015 to be effective September 30, 2015. The landlord said he served it personally on July 30, 2015 but corrected himself to July 31, 2015 when he consulted his calendar. His witness who is a co-worker gave proof of service in a letter. He said he saw personal service at 6 p.m. on July 31, 2015. The tenant contended that it was not served until August 5, 2015 by registered mail and he provided proof of the registered mail delivery. The landlord said that he served it personally and by registered mail because he wanted to avoid problems based on his previous problems with the tenant. The parties have had two prior hearings and both said they were familiar with procedures. The landlord confirmed he received the Application for Dispute Resolution by registered mail. I find the documents were legally served for the purposes of this hearing.

### **Issue(s) to be Decided:**

Has the landlord proved on the balance of probabilities that the tenancy ended pursuant to section 49 of the Act on September 30, 2015. Has the new landlord proved on a balance of probabilities that she sustained losses due to the tenant over holding and the amount of the losses? Is the landlord entitled to recover the filing fee?

Has the tenant proved on the balance of probabilities that they are entitled to compensation for being harassed by the landlord and breach of their peaceful enjoyment contrary to section 28 of the Act?

**Background and Evidence**

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced December 1, 2013, it became a month to month tenancy, rent was \$2,000 payable on the first of each month and a security and pet deposit of \$1300 was paid. The tenant vacated on November 1, 2015 as he said he had to come back for the rest of his furniture on November 1, 2015. The landlord served a Notice to End Tenancy pursuant to section 49 of the Act for the following reasons:

- a) All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord in writing to serve this Notice for the purchaser or close family member intends in good faith to occupy the rental unit.

The landlord provided evidence of a written request from the Purchaser dated July 21, 2015 which stated she planned to move into the home on October 1, 2015. The landlord said the completion date for the sale was September 14, 2015. He said after he served the Notice to End Tenancy on July 31, 2015, the tenant did not pay rent for September and he assumed it was the one month's free rent in accordance with section 51 of the Act. The tenant said he paid rent for September but had no receipt and did not understand this was part of the dispute hearing. The landlord said the tenant always paid rent on time by bank deposit but he did not pay for September and the Purchaser testified the tenant has not paid rent for October 2015 either.

The tenant claimed he had until October 31, 2015 to vacate based on the registered mail service of the Notice to End Tenancy which was not received until September 5, 2015. He said he checked with the Residential Tenancy Branch. He vacated on November 1, 2015 as he had to move out more furniture on November 1, 2015.

The new landlord, the Purchaser, gave evidence of losses suffered due to the tenant over holding. She said she had to rent another place for 4 months, totalling \$8,400 and incurred moving expenses of \$3150 as she had to move three times, first from her old address to her new home, then back to her old address to park the truck when she saw the tenant had not vacated, then to a place she rented and finally to her new home. She provided a tenancy agreement and an invoice for moving costs as evidence. She requests a monetary order for \$2,000 over holding rent, plus \$8400 paid in rent to her temporary landlord plus \$3150 moving expenses.

The tenant claims \$4,000 for harassment by the landlord and loss of his privacy and peaceful enjoyment. He provided evidence that a car drove through his back fence on August 20, 2015 and the landlord said he would call the insurance company and have it dealt with as soon as possible. The fence was not fixed as of his move-out date. He was deprived of his privacy as his backyard was used as a shortcut by pedestrians and school children. The landlord said that the insurance company has settled the claim but take their time to do things. The tenant said the landlord could have fixed it while waiting for insurance.

The tenant also noted that his legal move-out date was October 31, 2015 but the landlord repeatedly called or texted him to try to have him move out earlier. He noted the landlord came with the Police on September 30, 2015 and again on October 20, 2015. The tenant said he was on a business call and did not hear the door on October 20, 2015. The landlord said he came on September 30, 2015 to pay the tenant cash of \$1139.99 which the tenant claimed in a previous hearing but his claim was dismissed. Then the tenant demanded by email, saying he would not vacate until he got it. He said he brought the Police as witness to payment. The tenant agreed and said that was an itemized list of work they had agreed on. In the August 2015 hearing, the tenant had claimed this exact amount for repair reimbursement but the claim was dismissed as the tenant had no repair agreement in writing.

The tenant also said he had continuous problems for the past 6+ months with the hot water heater pilot light going off sporadically and having no hot water. He had requested repair but the landlord just came over and relit it with the result of it going out again within a few days. It was finally fixed on October 12, 2015 by a repair person who found an issue with the safety valve. He said there would be no hot water for a day or two every few weeks. The tenant provided his forwarding address in writing on November 6, 2015 and the landlord filed an Application on October 15, 2015. She said she is claiming unpaid over holding rent of \$2,000 against the deposits.

Included with the evidence are two copies of the Notice to End Tenancy, proof of service signed by a co-worker of the landlord, the Purchaser's tenancy agreement, moving invoice, registered mail receipts and delivery tracking information, incomplete/unfinished sentence telephone records, emails, photographs, statements of the parties,

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

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**Analysis:**

As discussed with the parties in the hearing, the onus is on each party to prove their claim. I find the evidence of the landlord credible and I prefer it to the evidence of the tenant in respect to the personal service of the Notice to End Tenancy on July 31, 2015. I find his evidence is well supported by his co-workers eye witness evidence submitted by letter and also by the fact that the tenant withheld rent for September 2015 which he would be entitled to do pursuant to section 51 of the Act. I find both parties were familiar with the Act as they had two previous hearings and I find the landlord's evidence credible that he used registered mail as back up service because of his difficult dealings with the tenant. The tenant had told the landlord he needed more time to move his heavy lacquered furniture and I find it likely that he decided to deny the first service and rely on the second registered mail service to buy himself more time to vacate. Although the tenant said he did not submit a receipt or proof of payment of September rent because he did not know it would be part of the hearing, I find the landlord's Application sets out that unpaid rent is claimed. Furthermore, I find the tenant submitted many other documents but provided no receipts or evidence of bank withdrawals. I find the tenancy ended on September 30, 2015 in accordance with the Notice to End Tenancy dated July 30, 2015 and personally served on July 31, 2015.

I find the landlord entitled to over holding rent from October 1, 2015 to November 1, 2015 when the tenant vacated, that is \$2,000 for October and \$66.66 for one day of November (2000/30).

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

I find the tenant violated the Act by not vacating pursuant to the legal notice. I find, as a consequence, the landlord/purchaser incurred losses as she had to rent elsewhere. Although she claims rent of \$2100 a month for four months, I find the tenancy agreement was not a fixed term agreement and she could have moved into her new home on November 2, 2015. I find she would have been required to legally give one month's notice to end her new tenancy and based on the tenant still occupying the premises as of November 1, 2015, she could not have mitigated her losses and given this Notice until November 2, 2015 and it would not have taken effect until December

31, 2015 as a one month Notice to End Tenancy must give a full month's notice and end on the day before the rent is due. Therefore, I find she was obligated to pay rent for October, November and December at \$2100 a month. I find she is entitled to recover her losses of \$6300 from the over holding tenant.

In respect to her moving cost, I find she would be obligated to pay one moving cost of \$1300 to move from her old address to her new address whether or not the tenant stayed in the home. I find her not entitled to recover her normal cost of moving. However, I find she had to pay this cost again (\$1300) to move back and store her goods and another cost (\$550) to move to the alternate unit she found. I find she is entitled to recover \$1850 to compensate her for the extra moving costs incurred due to the tenant over holding.

In respect to the tenant's claim for \$4,000, I find the landlord through act or neglect did not cause the fence problem. It was caused by a car driving into it. I find the landlord did contact the insurance company and settled but the fence was not repaired for two and a half months. I find this was unreasonable delay by the landlord. I take note that repairs could be done in the weather in August and September and I find that a month should have been sufficient time to effect repairs. I find the photographic evidence persuasive that this was a considerable invasion of the tenant's privacy. I find him entitled to \$150 rent rebate for the disturbance of his privacy and peaceful enjoyment by neglect of the landlord to repair the fence in a timely way. I find the weight of the evidence is that he had issues with the hot water tank which resulted in lack of hot water for a few days sporadically until October 12, 2015. I find him entitled to an additional \$50 rent rebate for the inconvenience.

Regarding his harassment claim against the landlord, I find insufficient evidence of harassment. Residential Policy Guideline #6 notes that harassment is defined in the Dictionary of Canadian Law as "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome". There are other definitions but all reflect the element of ongoing or repeated activity by the harasser. I find insufficient evidence of actions or speech provided by the tenant that are ongoing or repeated. The tenant cited a visit by the Police and the landlord but I find this was to give him money which he was demanding and to which he had no substantive claim according to a previous decision. He also notes telephone calls and another visit by the landlord and police on October 20, 2015. I find the landlord had sufficient reason to knock on his door on October 20, 2015 as a neighbor had reported the sound of a baby crying (and the tenant did not have a baby); it turned out to be a parrot. I find the telephone calls in evidence are calls from the new landlord enquiring when he will

vacate during the time he was over holding. I find insufficient evidence that this reaches the level of harassment. I dismiss this portion of his claim.

In respect to the security and pet deposits, I find the landlord filed an Application in accordance with section 38 of the Act to claim against the deposits. These will be applied to offset the amount owing.

**Conclusion:**

I find the landlord entitled to a monetary order as calculated below and to recover filing fees of \$100 for their application. I find the landlord entitled to retain the deposits to offset the amount owing.

I find the tenant entitled to rent rebates totaling \$200 for the reasons outlined above. The rebates will be applied to the amount owing to the landlord. I find the tenant entitled to recover only \$25 of his filing fee due to his limited success.

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|---|----------------|
| Over holding rent Oct. 1-Nov. 1, 2015           | 2066.66        |
| Losses incurred by landlord due to over holding | 6300.00        |
| Moving costs incurred due to over holding       | 1850.00        |
| Filing fee to landlord                          | 100.00         |
| Less rent rebate to tenant                      | -200.00        |
| Less deposits of tenant (no interest 2013-15)   | -1300.00       |
| Less filing fee to tenant                       | -25.00         |
| <b>Balance in Monetary Order to Landlord</b>    | <b>8791.66</b> |

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: December 16, 2015

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Residential Tenancy Branch

