



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Wall Management  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, OPT, FF

### Introduction

This was a hearing with respect to the tenant's application for a monetary award and an order for possession of the rental unit. The hearing was conducted by conference call. The tenant and the landlord's representative called in and participated in the hearing. The tenant submitted two pages of documents in support of his application. The landlord submitted documentary evidence in reply to the tenant's application. It was sent to the tenant by registered mail on December 11, 2015. The tenant said that he did not receive the landlord's documents mailed to the address of the rental unit. The tenant was evicted from the rental unit on October 30, 2015, but he continued to use the address of the rental unit as his mailing address and it is the address given by tenant in his application for dispute resolution. The documents submitted by the landlord consist of copies of documents, e-mail communications, and receipts given to the tenant as well as a written submission by the landlord. I have accepted the landlord documents as evidence in this proceeding because they are for the most part, documents of which the tenant has knowledge and secondly because they were sent to the mailing address provided by the tenant. The landlord reasonably assumed that since the tenant was using the rental unit as his mailing address, for the dispute resolution proceeding, that he was picking up his mail or made arrangements to have it forwarded to another address.

### Issue(s) to be Decided

Is the tenant entitled to a monetary award and if so, in what amount?

Is the tenant entitled to possession of the rental unit?

### Background and Evidence

The rental unit is an apartment in Vancouver. There was an earlier dispute resolution hearing and decision with respect to this tenancy. I was the arbitrator appointed to conduct the hearing on August 14, 2015. The hearing was with respect to the landlord's application for an order for possession and a monetary order for unpaid rent. In the August 14<sup>th</sup> decision, I found that the tenant failed to pay rent for May and June, 2015, but did pay rent for July and August. I granted the landlord an order for possession effective August 31, 2015 and a monetary order in the amount of \$2,250.00. In the reasons I recorded the comment of the landlord's representative at the hearing; he said that the landlord was prepared to reinstate the tenancy if the rent was paid in full by August 31<sup>st</sup>, otherwise it will proceed to enforce the order for possession.

Before this tenancy commenced, the tenant rented a different unit from the landlord at a nearby property. There have been previous dispute resolution proceedings with respect to his former tenancy. With respect to this tenancy, the tenant testified that he was wrongfully evicted by the landlord's bailiffs when the rent was paid in full. He said the eviction took place with no warning and his possessions were thrown out into the street. The tenant claimed a monetary award for damages. He claimed \$2,500.00 for moving costs, \$2,500.00 for loss of his belongings and \$2,500.00 for emotional pain and hardship. The tenant did not submit any documents to support his monetary claims; there were no invoices with respect to moving expenses and no documentary evidence with respect to the claim for loss of belongings. The tenant said that the bailiffs left his belongings outside the rental unit in the street and the things of value were taken before he had a chance to recover them.

The tenant said that his rent arrears were paid in full when he was evicted. He referred to a photocopy of bank e-transfer information in support of his position. The tenant's document showed an electronic transfer of \$500.00 on August 20, 2015 that was cancelled and second transfer of \$500.00 on the same day, also cancelled. A third \$500.00 transaction on August 20 was noted as completed. There was another cancelled transaction on August 30<sup>th</sup>. The tenant's document recorded a \$1,600.00 transfer on August 31, 2015, a \$900.00 transfer on September 8, 2015 and a \$1,100.00 transfer on September 29, 2015.

The landlord submitted a history of the tenant's rent payments. The landlord's representative disputed the tenant's evidence that his rent was paid in full when he was evicted. He said that the tenant made electronic payments and then cancelled them.

As of August 31<sup>st</sup> he was in arrears in the amount of \$150.00. As noted on Receipts issued to the tenant the payments he made were accepted: "for use and occupancy only". The landlord's representative testified that the tenant was deceptive in making payments on account of arrears and repeatedly made electronic payments and then cancelled them moments later. The landlord wrote to the tenant on September 29, 2015. The letter was sent to the tenant by registered mail. In the letter the landlord's representative said in part that:

As you were informed in the Decision, you had until August 31, 2015 to pay a total sum of \$2,250.00 to the Landlord or move out. You did not pay the full amount owed by August 31, 2015. We did receive a payment in September but that goes towards September's rent and not the arrears amount.

It is our intention to seek Bailiff Services if you fail to move from the premises within 30-days. If you fail to move during this allotted time frame, you will be forcibly removed from the property

The tenant did not pick up his registered mail and the landlord obtained a writ of possession and employed a bailiff to evict the tenant. The landlord's representative testified that he was present on October 30, 2015 when the bailiff attended at the rental unit. He said the bailiff attended with a 5 ton moving van and two men to move the tenant's belongings out of the rental unit. When the bailiff arrived there were several young men and a woman occupying the rental unit. The landlord's representative asked for their identity; one occupant said he was the son of the tenant and had sublet the apartment from his father, who was now living in a trailer park in Surrey. The landlord's representative testified that all of the tenant's belongings were removed from the rental property except for a large bookshelf that the tenant had built into one of the bearing walls of the rental unit and: "a fish net contraption" on the balcony installed to keep the tenant's cat from roaming the building.

### Analysis

The tenant has claimed that he was improperly evicted although his rent was paid and he has claimed damages for moving costs, loss of belongings and emotional paid and hardship. At the hearing on August 14, 2015, the landlord was granted an order for possession effective August 31, 2015. It was effective on that day because the landlord accepted an August rent payment for use and occupancy only. The tenant did not pay arrears of rent by August 31, 2015. I find that when the landlord finally enforced the order for possession on October 30, 2015 the rental arrears had not been paid in full and the rent payments made to the landlord since the order for possession was granted

were accepted “for use and occupancy only”, as set out on the receipts issued for each payment.

On the evidence before me the tenant was not residing at the rental unit when he was evicted; his son and others were staying at the rental unit. The tenant claimed damages, including moving costs, but he has not submitted any documentary evidence to show costs incurred for moving. The tenant said his belongings were left outside and lost. His testimony was contradicted by the landlord’s representative. The tenant’s son was present and the eviction was carried out by a bailiff. His belongings were packed up and loaded into a moving truck by the bailiff. The tenant has not submitted any documents, photographs, nor any list or description of supposed missing items; I find that the tenant has not submitted sufficient evidence to establish on a balance of probabilities that he is entitled to a monetary award in any amount.

The tenancy has ended pursuant to an order for possession granted to the landlord. The tenant’s application for an order for possession and a monetary award is dismissed without leave to reapply.

#### Conclusion

The tenant’s application is dismissed. I make no award with respect to the filing fee for this application.

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: January 29, 2016

---

Residential Tenancy Branch

