



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

OLC, MNDC, PSF, O

### Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss, for an Order requiring the Landlord to comply with the *Residential Tenancy Act* (Act) or the tenancy agreement, for an Order requiring the Landlord to provide services, and for “other”.

The Tenant stated that the Application for Dispute Resolution, the Notice of Hearing, and 7 pages of evidence submitted to the Residential Tenancy Branch with the Application were personally served to the Landlord, although she cannot recall the date of service. The Landlord stated that he received these documents from his wife “a few weeks ago”. On the basis of the testimony of both parties, I find that the Landlord has been sufficiently served with these documents and the evidence was accepted as evidence for these proceedings.

The Tenant submitted 6 photographs to the Residential Tenancy Branch on January 05, 2017. The Tenant stated that these photographs were not served to the Landlord as evidence for these proceedings. As the photographs were not served to the Landlord as evidence, they were not accepted as evidence for these proceedings.

On January 13, 2017 the Landlord submitted 13 pages of evidence to the Residential Tenancy Branch. The Landlord stated that these documents were personally served to the Tenant “about three weeks ago”. The Tenant stated that she received some of the documents in the Landlord’s evidence package. All of the documents the Tenant acknowledged receiving were accepted as evidence for these proceedings.

The Tenant stated that she did not receive a copy of the Two Month Notice to End Tenancy that is the subject of these proceedings in the evidence package served to her by the Landlord. As this document has been accepted as evidence on the basis of the Tenant’s submission, I find that it is not necessary for me to also accept the Landlord’s copy of the Notice as evidence for these proceedings.

The Tenant stated that she did not receive a copy of the undated, hand written document that begins with the words “came to the conclusion to” in the evidence package served to her by the Landlord. The Landlord was advised that this document cannot be accepted as evidence for these proceedings as there is insufficient evidence to conclude that the document was served. I

find that this document is simply a written submission made by the Landlord and that the Landlord can introduce it orally if it is relevant to issues in dispute.

I have read all of the documents accepted as evidence, although only evidence that I considered to be relevant to my decision is referenced in this decision.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

At the outset of this hearing the Tenant stated that she intended to call a witness. At the conclusion of the hearing the Tenant stated that she does not need to call her witness as the witness will not be assist in proving any issues in dispute at these proceedings.

Issue(s) to be Decided:

Is the Tenant entitled to financial compensation?

Is there a need to issue an Order requiring the Landlord to provide services?

Is there a need to issue an Order requiring the Landlord to comply with the *Act* or the tenancy agreement?

Background and Evidence:

The Landlord and the Tenant agree that:

- this tenancy began on January 15, 2016;
- the Tenant initially agreed to pay rent of \$700.00 per month;
- the parties subsequently agreed that rent would be reduced to \$650.00 per month;
- rent is due by the first day of each month;
- the Tenant was served with a Two Month Notice to End Tenancy for Landlord's Use of Property, which is dated December 01, 2016;
- the Two Month Notice to End Tenancy for Landlord's Use of Property, dated December 01, 2016, declares that the Tenant must vacate the rental unit by February 01, 2017; and
- the Tenant is currently residing in the rental unit.

The Landlord stated that on November 30, 2016 his wife personally served the Tenant with the Two Month Notice to End Tenancy for Landlord's Use of Property that is the subject of these proceedings. He stated that his wife incorrectly dated the Notice to End Tenancy and that it was neither signed, nor served, on the date noted on the Notice, which is December 01, 2016.

The Tenant stated that on December 02, 2016 she located the Two Month Notice to End Tenancy for Landlord's Use of Property that is the subject of these proceedings on the door of the rental unit.

The Tenant stated that she is not disputing the Two Month Notice to End Tenancy for Landlord's Use of Property. She stated that she is simply seeking clarification on the effective date of that Notice, on the basis of her submission that it was not served at least two months before the declared effective date of the Two Month Notice.

The Tenant stated that she is also seeking clarification that she is entitled to one month's free rent because she has been served with a Two Month Notice to End Tenancy for Landlord's Use

of Property. The Landlord stated that he was not aware that the Tenant would be entitled to one month's free rent after being served with a Two Month Notice to End Tenancy for Landlord's Use of Property. At the hearing the Landlord was advised that the Tenant was entitled to one month's free rent after being served with a Two Month Notice to End Tenancy for Landlord's Use of Property, he stated that he now understood this entitlement.

The Tenant is seeking compensation for a bicycle. She stated that her bicycle was stored in a shed on the residential property; several months ago another tenant living on the property moved her bicycle from the shed; shortly after the bicycle was moved she advised the Landlord of the incident; and the Landlord did not intervene.

The Landlord stated that he was never informed of a problem with the Tenant's bicycle until he was served with notice of these proceedings.

The Tenant is seeking compensation for a bicycle trailer. She stated that in November of 2016 the Landlord told her he moved her bicycle trailer to the front of the property; that the trailer was subsequently stolen; and that she thinks it was stolen because it was moved to an unsafe location.

The Landlord stated that he never moved the bicycle trailer and he never told the Tenant he had moved it.

The Tenant is seeking compensation for lost personal property. She stated that she had personal property stored in the laundry room, which she shared with other people living on the residential property; that someone moved her property; and that she does not know who moved her property.

The Landlord stated that the Tenant did not have the right to store personal property in the laundry room; that he did not move her property from the laundry room; and that he was not told about property being moved from the laundry room until he was served with notice of these proceedings. He stated that he did move garbage bags which were left outside because he assumed they were garbage.

The Tenant stated that the Landlord is harassing her, in part, by threatening to turn off the power. The Landlord stated that he threatened to turn off the power after the Tenant did not pay her rent when it was due. He stated that prior to this hearing he was not aware that he did not have the right to turn off the power to the rental unit.

The Landlord and the Tenant agree that when this tenancy began the Tenant was provided with a "bar fridge". The Tenant stated that the "bar fridge" did not work properly and that shortly after the tenancy began the Landlord provided her with a normal sized refrigerator, which was placed in the laundry room.

The Landlord stated that shortly after the Tenant told him that the "bar fridge" did not work properly so he told her that she could use the larger refrigerator that was located in the laundry room.

The Landlord and the Tenant agree that sometime in October of 2016 the Landlord blocked the Tenant's access to the laundry room for two or three days. The Landlord stated that he

screwed the door shut because the Tenant did not pay her rent and that he unscrewed the door after the Tenant paid her rent.

After being clearly advised that he does not have the right to block the Tenant's access to the laundry room prior to February 28, 2017 and that he does not have the right to terminate the electricity, the Landlord stated that he may disregard this direction.

At the hearing the parties were advised that if the Landlord withdraws a service/facility, such as electricity or access to the refrigerator/laundry room, in February of 2017 the Tenant has the right to file another Application for Dispute Resolution seeking compensation for loss of quiet enjoyment of the rental unit and compensation for any expenses the Tenant incurs as a result of the Landlord's actions. The Landlord then declared that it may be "worth a few grand" to show the Tenant "who is in charge".

Analysis:

Section 49 of the *Act* authorizes a landlord to end a tenancy for a variety of reasons by serving the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property. On the basis of the undisputed evidence I find that the Tenant was served with a Two Month Notice to End Tenancy, is dated December 01, 2016, that was served pursuant to section 49 of the *Act*.

I find that the Landlord submitted insufficient evidence to establish that the Two Month Notice to End Tenancy was personally served to the Tenant on November 30, 2016. In reaching this conclusion I was heavily influenced by the absence of any evidence, such as a written statement from the person who allegedly served the document, which corroborates the Landlord's testimony that his wife personally served it on November 30, 2016.

I find that the Tenant submitted insufficient evidence to establish that the Two Month Notice to End Tenancy was posted on the door of her rental unit. In reaching this conclusion I was heavily influenced by the absence of any evidence that corroborates this testimony.

In circumstances such as these, where the testimony of either party cannot be corroborated, I find that the most reliable evidence is the Two Month Notice to End Tenancy. On the basis of the declaration at the bottom of the Two Month Notice to End Tenancy, I find that the Notice was personally served to the Tenant on December 01, 2016.

Section 49(2) of the *Act* stipulates that a Two Month Notice to End Tenancy for Landlord's Use of Property must give notice to end a periodic tenancy that is not earlier than 2 months after the date the tenant receives the notice and is the day before the day in the month that the rent is due. To end this tenancy on January 31, 2017 the Two Month Notice to End Tenancy must have been received by the Tenant on, or before, November 3 2016. As I have concluded that the Two Month Notice to End Tenancy was personally served on December 01, 2016, I find that the earliest effective date of this Notice is February 28, 2017.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. As the parties were advised at the hearing, I find that the effective date of the Two Month Notice to End Tenancy that is dated December 01, 2016 is February 28, 2017.

Section 51(1) of the *Act* stipulates that a tenant who receives a notice to end a tenancy under section 49 of the *Act* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. As the Tenant was served with a Two Month Notice to End Tenancy pursuant to section 49 of the *Act*, I find that she is entitled to compensation which is the equivalent of one month's rent. As the parties were advised at the hearing, the Tenant is not obligated to pay any rent for February of 2017.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

I find that the Tenant has submitted insufficient evidence to establish that the Landlord did not take appropriate care of the Tenant's bicycle. In reaching this conclusion I was heavily influenced by the Tenant's acknowledgement that another tenant, rather than the Landlord, moved her bicycle out of the building in which it was stored. I was further influenced by the absence of evidence that corroborates the Tenant's testimony that she discussed this incident with the Landlord or that refutes the Landlord's testimony that this incident was not brought to his attention until he was served with this Application for Dispute Resolution.

As the Tenant has failed to establish that the Landlord was aware of a storage problem with the Tenant's bicycle, I find that the Landlord is not obligated to compensate the Tenant for any loss or damage to the bicycle.

I find that the Tenant has submitted insufficient evidence to establish that the Landlord moved her bicycle trailer. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant's testimony that the Landlord told her he moved the trailer or that refutes the Landlord's testimony that he did not move the trailer not did he tell the Tenant he moved the trailer.

As the Tenant has failed to establish that the Landlord moved her bicycle trailer, I find that the Landlord is not obligated to compensate the Tenant for any loss or damage to the bicycle trailer.

I find that the Tenant has submitted insufficient evidence to establish that the Landlord moved the Tenant's personal property from the laundry room. In reaching this conclusion I was heavily influenced by Tenant's acknowledgement that she does not know who removed her property from the laundry room.

As the Tenant has failed to establish that the Landlord moved her personal property from the laundry room, I find that the Landlord is not obligated to compensate the Tenant for any loss or damage to the bicycle trailer.

In the event a third party moved the Tenant's personal property and left it in garbage bags on the residential property and that the Landlord subsequently discarded those bags, I cannot conclude that the Landlord breached any legal obligation to the Tenant when he did so. I find that it is reasonable for the Landlord to discard of garbage bags left on the common residential property, as tenants do not have the right to store property on common property and it would be

reasonable for the Landlord to conclude it was garbage.

Section 27(1)(a) of the *Act* prohibits a landlord from terminating or restricting a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation. I find that the electricity is a service that is essential to the use of the rental unit as living accommodations and I therefore find that the Landlord does not have the right to terminate power the rental unit while the Tenant is living in the unit.

I find that the large refrigerator is a service that was provided with the rental unit. Even if I were to conclude that the large refrigerator is not essential to the use of the rental unit because the Tenant has access to a "bar fridge", I would conclude that the larger refrigerator is a service or facility as that term is defined by section 1 of the *Act*.

Section 27(2) of the *Act* allows a landlord to terminate or restrict a service or facility other than one mentioned in section 27(1) of the *Act* only if the landlord gives 30 days' written notice of the termination or restriction and reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility. As there is no evidence that the Landlord has given the Tenant written notice of his intent to prevent the Tenant from using the larger refrigerator, I find that the Landlord does not currently have the right to prevent the Tenant from using the larger refrigerator.

As the Landlord does not currently have the right to prevent the Tenant from using the larger refrigerator, I find that the Tenant must not prevent the Tenant from accessing the laundry room where the refrigerator is kept, until at least thirty days after he provides the Tenant with written notice that she cannot access this room and the refrigerator.

On the basis of the undisputed evidence, I find that the Landlord breached section 27(2) of the *Act* when he blocked the Tenant's access to the large refrigerator and that he breached her right to the quiet enjoyment of the rental unit when he threatened to cut off her power. I am unable to award compensation to the Tenant for these breaches, however, as she has not claimed compensation for the breaches. In her monetary Order Worksheet the Tenant has only claimed compensation for loss and/or damage to her personal property, in the amount of \$830.00.

The Tenant retains the right to file another Application for Dispute Resolution seeking compensation for loss of quiet enjoyment of the rental unit and compensation for any associated expenses if the Landlord blocks her access to the laundry room/refrigerator or if he terminates the power or any other essential service.

The Landlord is reminded that he may be subject to administrative penalties that are over and above compensation payable to the Tenant if he blocks the Tenant's access to the laundry room/refrigerator in the future or if he terminates the power or any other essential service in the future. Pursuant to section 94.1(1) of the *Act* the director may order a landlord to pay a monetary penalty of up to \$5,000.00 per day if the director is satisfied that the landlord has failed to comply with a decision or order of the director.

Conclusion:

**The effective date of the Two Month Notice to End Tenancy, dated December 01, 2016, is February 28, 2017 and that Tenant must vacate the rental unit by that date.**

**The Tenant is not obligated to pay any rent for February of 2017.**

**The Landlord must not terminate the power to the rental unit while the Tenant is living in the rental unit.**

**The Landlord must not prevent the Tenant from accessing the laundry room or using the refrigerator in that room until he has provided her with at least thirty days written notice of his intent to withdraw these services/facilities.**

The Tenant has failed to establish that she is entitled to a monetary Order and her application for a monetary Order is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

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Residential Tenancy Branch

Dated: February 02, 2017