



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, OLC, FF

### Introduction

This hearing was originally convened by way of conference call in response to the tenant's application for a Monetary Order to recover the security and pet deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for the landlord to comply with the *Act*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application. The hearing was adjourned at the outset as the landlord was involved in an accident and was unable to provide evidence at that time. The tenant was permitted to provide additional documentary evidence in rebuttal of the landlord's evidence which was received late by the tenant and that has been considered due to the adjournment of this hearing. The hearing reconvened today.

The tenant, the landlord and an agent for the landlord attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions under oath. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this reconvened hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Issues

With regard to the tenant's application to recover the security and pet deposits; Res Judicata is a doctrine that prevents rehearing of claims and/or issues arising from the same cause of action, between the same parties, after a final judgment was previously issued on the merits of the case. I therefore decline to hear the matters regarding the security and pet deposit as those issues were decided upon in the June 25, 2014 Decision. To rehear those issues now would constitute Res Judicata, as defined above.

As the tenant vacated the rental unit nearly two years ago the tenant withdrew her application for an Order for the landlord to comply with the *Act*, regulations or tenancy agreement, as a tenancy no longer exists between the parties.

#### Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

#### Background and Evidence

The parties agreed that this tenancy started on May 01, 2013 although the tenant took possession of the rental unit on April 29, 2013. The tenancy ended on July 07, 2014. The parties have not provided copies of the tenancy agreement in documentary evince but both agreed that the tenancy agreement stated in part that the tenant would pay \$1,600.00 per month for the upper unit and had 30 days to find a tenant she approved off for the lower unit. If the tenant rented the lower unit the tenant would be responsible for the entire house at a monthly rent of \$2,200.00. If the tenant could not rent the lower unit after 30 days the landlord would rent the lower unit and the tenant would only rent the upper unit.

The tenant testified that the landlord served the tenant with a Two Month Notice in bad faith. The tenant agreed she did not file an application to dispute the notice and testified

that the landlord filed an application for an Order of Possession. The tenant testified that she was never served the Order of Possession but the landlord still got the bailiffs to evict the tenant. The tenant testified that the landlord did not move into the rental unit and this was the reason provided on the Notice. The tenant therefore seeks compensation equal to two months' rent of \$3,200.00 from the landlord.

The tenant testified that as the landlord evicted the tenant the tenant incurred costs of \$175.30 for a new mailbox, \$945.05 for storage fees for her belongings and seeks \$300.00 for the costs incurred to move her belongings into storage and then into her new residence. The tenant testified that she had provided the receipts for these claimed items in her evidence.

It is important to note here that there were no receipts included in the tenant's evidence for the above claimed items sent to the Residential Tenancy Branch and the landlord testified that they had not received any such receipts in their evidence package from the tenant.

The tenant testified that she had wanted to continue to rent the house but someone reported to the City that there was an illegal suite in the basement. Because of this the tenant's tenants living in the lower unit moved out. The landlord then wanted the tenant to pay rent for the whole house without having use of the lower unit. The only reason the tenant agreed to rent the whole house was because she could sublet the lower unit. If this was going to be decommissioned by the city then the tenant could not pay rent for that unit.

The landlord's agent testified that the Two Month Notice was issued in good faith. Someone called the City and reported that the lower unit was not a legal suite. The City bylaws require that the house is rented as a single family dwelling or that the landlord/owner may occupy the upper unit and rent the lower unit. This does not mean the lower unit was an illegal unit the landlord did not know that she had to live in the unit in order to rent the lower suite. To remedy this, the landlord then served the tenant with

the Two Month Notice and stated on that Notice that she was going to occupy the rental unit. The Notice was served in person to the tenant on February 28, 2014 yet at the last hearing the tenant gave testimony that she did not get the notice until March 01, 2014. The Notice had an effective date of April 30, 2014.

Due to this the landlord rented out her other home and fully intended to take possession of the rental unit and live there on May 01, 2014. The landlord's agent referred to the tenancy agreement provided in documentary evidence showing the landlord's home was rented and that the tenant was due to move in on May 10, 2014. The landlord's agent testified that the tenant refused to move out of the rental unit and failed to pay any rent for May, June or July. The landlord's agent testified that he served the Order of Possession on the tenant's door on June 27, 2014 after the last hearing. The Notice was there for two days and the tenant still failed to move out so the landlord went to Supreme Court and enforced the Notice. A writ of Possession was obtained and the Court sent bailiffs in to remove the tenant on July 07, 2014.

As the landlord was unable to move into the unit she either faced being homeless or she had to inform the tenant for her own home that he could not move in. The landlord's agent referred to the email correspondence between the landlord and tenant where the tenant indicates that she will not vacate until she is ready. As the landlord was left not knowing when the tenant was going to vacate the rental unit the landlord had no other choice but to stay in her own unit. The landlord had even asked the tenant if she could move her belongings into the basement unit while the tenant vacated but the tenant would not allow the landlord access. This is also in the email correspondence between the parties.

The landlord's agent testified that in the end after all this trouble with the tenant the landlord decided to decommission the unit and to stay in her own home. The unit had to then be cleaned and was eventually sold on January 14, 2015. The landlord's agent testified that the tenant did not incur costs for storage as she stored her belongings in her neighbour's unit next door and moved in with him. The landlord's agent referred to

their photographic evidence showing the tenant's belongings stored under the neighbour's deck. The landlord's agent testified that he received email correspondence from that neighbour, who was also a tenant of the landlords, and he was asking the landlord to pay him \$20,000 for causing chaos to him after the landlord sold that property to. He also asked for \$8,200.00 on behalf of this tenant and stated if the landlord paid this then the tenant and this neighbour would go away.

The tenant testified that she was aware her neighbour wrote a letter to the landlord but testified that she did not ask him to do so on her behalf. The tenant testified that she only stayed with this neighbour and his girlfriend for two weeks and only stored some rocks, plants and a cat tree under his deck.

### Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows: With regard to the tenant's application for two months compensation for the Two Month Notice, I refer the parties to s. 51(2) of the Act which states:

*(2) In addition to the amount payable under subsection (1), if*

*(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or*

*(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,*

*the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.*

The parties agreed that the landlord never moved into the rental unit; therefore I have considered the reasons given for the landlord's failure to move into the rental unit and whether or not the Two Month Notice was issued in good faith.

The "good faith" requirement imposes a two part test. First, the landlord must truly intend to use the premises for the purposes stated on the Notice to end the tenancy. Second, the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

I accept the landlord's evidence that she truly intended to occupy the rental unit at the time she served the Two Month Notice to the tenant. The landlord has sufficient evidence to show that she had rented out her own home so she could move into the rental unit and comply with the City bylaws concerning the lower unit. It is unlikely that the landlord would have made such preparations had she not intended to move into the unit.

I am satisfied that the landlord's agent did serve the tenant with an Order of Possession and this evidence of service was accepted in Supreme Court for the Writ of Possession to be issued to the landlord. Even after the tenant was served an Order of Possession she still failed to vacate the rental unit. This left the landlord in a difficult position whereas she had to let her tenant she had entered into an agreement go and therefore not knowing when the tenant was going to vacate meant the landlord was unable to find a new tenant for her unit at short notice.

A tenant should not be rewarded for her noncompliance with a decision and order and it is my decision that at the time the Notice was served upon the tenant it was the landlord's intention to occupy the rental unit and she was prevented from doing so because the tenant failed to vacate the home in accordance with the undisputed Notice and the order of Possession. This left the landlord having to make other choices about moving into the rental unit. Consequently, the tenant's claim to recover two months' rent of \$3,200.00 is dismissed.

With regard to the tenant's claim for a post box, storage and moving costs; when a tenant has been evicted from a rental unit then these costs are the tenant's responsibility and not that of the landlords. The tenant received a free month's rent in compensation for the Two Month Notice under s. 51(1) of the *Act*. This compensation is intended to help tenants with moving costs after they have been served a Two Month Notice under s. 49 of the *Act*. There is no provision under the *Act* for the tenant to be awarded any further moving costs. These sections of the tenant's application are therefore dismissed.

As the tenant's claim has no merit the tenant must bear the cost of filing her own application.

#### Conclusion

The tenant's application is dismissed without leave to reapply.

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: March 13, 2017

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Residential Tenancy Branch