



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding GEORGIAN HOUSE  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

Tenant: CNR, DRI, LAT, LRE, MNDC, OLC, PSF, RPP, FF  
Landlord: MNR, OPR, FF

### **Introduction**

This hearing was convened in response to cross-applications by the parties.

The tenant filed their application on August 09, 2017 pursuant to the *Residential Tenancy Act* (the Act) for Orders associated with a surviving tenancy, for the landlord to return personal property and a Monetary Order approaching the limit under the *Small Claims Act*, of \$34,830.00 in respect to certain Invoices and claimed loss of personal property.

The landlord filed on August 11, 2017 for an Order of Possession and a Monetary Order for unpaid rent in the amount of \$1,500.00, and to recover the filing fee.

The tenant and the landlord along with their legal counsel attended the hearing and all given opportunity to discuss and settle their disputes. The landlord acknowledged receiving the evidence of the tenant. The tenant testified they did not receive any evidence of the landlord despite the landlord's supporting evidence they sent evidence to the tenant on September 07, 2017 to the dispute address by registered mail, and to an address on E. 48<sup>th</sup> Ave in Vancouver which the landlord claims was included within the tenant's evidence sent by them. The tenant acknowledged they currently reside on E. 48<sup>th</sup> Ave of Vancouver however declined to provide specific address particulars. I found that the landlord sent their evidence to the tenant by registered mail in accordance with the Act and that the mail went unclaimed. On reflection I find that the landlord's mail is deemed to have been received by the tenant September 12, 2017: short of the required 7 days before this hearing for receipt of rebuttal evidence,

excluding the received date and today's date. As a result, I have only considered the landlord's document evidence submissions to the extent the parties are in agreement

with that evidence and the evidence is *relevant*. The parties were given opportunity to present all *relevant* evidence in testimony. Prior to concluding the hearing both parties acknowledged they had presented all of the *relevant* evidence that they wished to present.

**Issue(s) to be Decided**

Is the tenant entitled to the monetary amounts claimed?

Has the tenancy ended?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to the monetary amounts claimed?

**Background and Evidence**

The undisputed evidence in this matter is as follows. The tenancy began April 01, 2017 as a written tenancy agreement. The parties agreed having an “oral management contract” respecting the tenant as employee of the landlord for caretaker of the residential property. The hearing had benefit of a written tenancy agreement from the tenant, and one from the landlord, which it is noted are in sharp contrast as to the terms and other particulars.

It is undisputed the parties disagreed over the tenant’s work as caretaker and on July 05, 2017 the landlord gave the tenant a notice immediately terminating the tenant’s employment and stating the tenant needing to empty and clean their rental unit inside of 2 days by July 07, 2017. The tenant did not testify as to what they did following July 07, 2017 however they provided that on July 29 a Notice to Enter was posted on their door stating the landlord would be showing the suite to prospective tenants starting after 24 hours.

During the hearing it was discussed with the parties how Section 44 of the Act prescribes a tenancy ends and the landlord’s failing in providing the tenant with valid Notice to End pursuant to Section 48 of the Act using the approved form. None the less, during the hearing it was established the tenant did not occupy the unit from at least July 31, 2017 with the parties confirming the tenant and their possessions were also not in the unit as of July 31, 2017. The tenant testified they are currently residing elsewhere and the whereabouts of their belongings unknown to the tenant and alleged by them to have been taken by the landlord.

The landlord testified they assumed the tenant had vacated during July 2017 as they had not seen them during that month and there were no indications the tenant resided in the unit. As a result, on July 31, 2017 the landlord employed a locksmith to give them access to the rental unit as the locks had been altered and they were eager to re-

rent the unit. On the landlord entering the rental unit they observed their Notice to Enter document now inside the unit and that the unit was vacant, save a handful of belongings which included a dining table and a bookshelf which the landlord described as likely castoffs.

The tenant testified that on the same date of July 31, 2017 they were notified by unnamed residents of the property that 2 persons were in the rental unit. The tenant called Police whom attended and independently spoke to the tenant and the landlord with the result that the tenant subsequently determined best to have the newly changed lock by the landlord again altered by a locksmith. The tenant testified that, without anyone else in attendance, they entered the rental unit and claims they discovered the unit had been, "cleaned out". The tenant testified that before entering the unit the landlord was nowhere to be located by them or the officers, and it appeared to them the landlord was avoiding efforts to contact them by phone.

The tenant alleges it was the landlord's doing in removing all of their belongings from the rental unit. The tenant has provided an itemized list inclusive of invoices, purportedly payable to the tenant, and of their belongings including groceries and sundries with ancillary dollar values of each. The landlord denied the tenant's assertion they removed the tenants belongings. The landlord reiterated the rental unit was mostly empty when they eventually gained access. The tenant did not present evidence nor provided supporting evidence respecting invoices.

On August 02, 2017 the landlord served the tenant with a 10 Day Notice to End tenancy for unpaid rent claiming the tenant owed rent for August, 2017.

### **Analysis**

*A copy of the Residential Tenancy Act, Regulations and other publications are available at [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).*

The onus is on the respective parties to prove their claim on balance of probabilities. On preponderance of all evidence submitted, and on balance of probabilities, I find as follows:

#### *Landlord's claim*

Section 63 of the *Residential Tenancy Act* provides that the parties may attempt to settle a dispute during a hearing. Pursuant to this provision, during the hearing discussion between the parties led to their agreement to settle the landlord's monetary claim on application as follows.

1. The parties agreed the landlord withdraws their application seeking monetary relief and the tenant will return to the landlord *all keys of the landlord* in the tenant's possession on September 21, 2017 at 11:00 a.m.
2. The parties agreed that on September 21, 2017 at 11:00 a.m. it is further available to the tenant to retrieve whatever of their possessions remains in the dispute rental unit.

Both parties testified they understood and agreed to the above terms. The parties confirmed their acceptance this agreement was made on a voluntary basis and that these particulars comprise the full and final settlement of the landlord's monetary claim.

I accept the landlord's withdrawal of their monetary claim and effectively dismiss it.

So as to further perfect the above agreement, it must be noted that the aforementioned *keys of the landlord* refers to all the access keys to the units and privileged areas of the residential property supplied to the tenant as the landlord's agent.

**I Order** the tenant to return to the landlord *all keys of the landlord* in their possession on September 21, 2017 at 11:00 a.m.

The landlord further seeks an Order of Possession. Irrespective of all other matters in this proceeding I find the rental unit has effectively been vacant of possessions supporting occupation and the tenant has not occupied the rental unit for 7 weeks. Pursuant to my authority under Section 44(f) I find the tenancy has ended pursuant to Section 44(d) of the Act and the landlord has regained de facto possession. An Order of Possession is not necessary.

#### *Tenant's claim*

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the Act, which states;

#### ***Liability for not complying with this Act or a tenancy agreement***

**7** (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

*(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenant bears the burden of establishing their claim on the balance of probabilities. The tenant must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

It must be noted that an Arbitrator's ability to delve behind the scenes and arrive to the truth in the face of parties' opposing versions of facts (in this matter respecting the tenant's possessions) is limited to what is placed before them. On a balance of probabilities, I have been presented with evidence that on July 31, 2017 the tenant's rental unit was prominently vacant of possessions. I have not been presented with proof that in this matter a loss truly exists. That is, that the landlord removed the tenant's belongings. I find the evidence is insufficient to establish this assertion of the tenant even on a balance of probabilities. Nor have I been presented with proof the alleged loss was the result of the actions of the landlord in violation of the *Act*. In addition, even if I were to accept the tenant's assertion the landlord removed all of their belongings the tenant has not provided sufficient evidence verifying the actual amount required to compensate for the claimed loss. I find the tenant has not provided sufficient evidence to establish this portion of their monetary claim on application. As a result I must dismiss the tenant's monetary claim in respect to their personal belongings.

The tenant and landlord did not present or provide evidence in respect to the tenant's monetary claim for *Invoices* (items 1-4 in tenant's Monetary Order Worksheet, March,

May, June and Gardening, totaling \$7988.00). Therefore I must dismiss this portion of their monetary claim.

As I have determined the tenancy has ended I dismiss the balance of the tenant's claims which pertain to a surviving tenancy.

None the less, I find that in not providing the tenant with a valid 1 Month Notice to End Tenancy pursuant to Section 48 of the Act the landlord effectively abridged the tenant's rights and in the process this failure of the landlord gave rise to the disputes before this proceeding. I grant the tenant *nominal compensation* in the amount of **\$250.00**. An Arbitrator may award nominal damages or a nominal award which is a minimal award granted where no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.

### **Conclusion**

The tenancy has ended with the landlord regaining de facto possession of the unit.

The parties agreed to resolve the landlord's monetary claim as provided in their record of settlement.

The tenant has been Ordered to return to the landlord all keys of the landlord in their possession.

The tenant's monetary claims are dismissed as are the tenant's remaining items on application.

**I grant** the tenant a Monetary Order under Section 67 of the Act for the amount of **\$250.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

**This Decision is final and binding.**

*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: September 21, 2017

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Residential Tenancy Branch