



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNR, CNC, FF, LRE, MNDC OLC, PSF, RP, RR

### Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order that the landlord allow access to the rental unit.
- b. A Tenant's Order of Possession
- c. An order that the landlord provide services or facilities required by the tenancy agreement or law.
- d. An order for the return of personal property.
- e. An order for a monetary order for damages and aggravated damages in the sum of \$2425.81
- f. An order to recover the cost of the filing fee?

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Amended Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord carries on business on April 5, 2018 and was personally served on an agent for the landlord on April 6, 2018.

### Preliminary Issue:

The landlord submits the Residential Tenancy Act does not apply as this is living accommodation occupied as vacation or travel accommodation.

The relevant evidence includes the following:

- The parties signed an agreement that was entitled Travel Accommodation tenancy agreement. The agreement provides that the Residential Tenancy Act does not apply.
- The agreement was for a fixed term of 6 months starting on December 1, 2017 and ending on May 31, 2018 at which time the tenant would have to vacate the rental unit. The rent was \$2200 per month. The tenant paid a security deposit of \$100 at the start of the tenancy.
- The form of the agreement is very similar to a residential tenancy agreement and in parts of the agreement it refers to it as a residential unit.
- The rental unit was the tenant's primary residence. She has been working while living in the rental unit.
- The landlord did not charge GST.
- Rent is paid on a monthly basis and not charged on a daily basis.
- The rental unit is furnished.

Section 2 of the Residential Tenancy Act provides as follows:

What this Act applies to

2 (1) Despite any other enactment but subject to section 4 [what this Act does not apply to], this Act applies to tenancy agreements, rental units and other residential property.

(2) Except as otherwise provided in this Act, this Act applies to a tenancy agreement entered into before or after the date this Act comes into force.

Section 4(e) of the Act provides as follow:

What this Act does not apply to

4 This Act does not apply to

...

(e) living accommodation occupied as vacation or travel accommodation,

Section 5 the Act provides as follows:

This Act cannot be avoided

5(1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

After carefully considering all of the evidence I determined this is in essence a residential tenancy and Residential Tenancy Act applies for the following reasons:

- I do not accept the submission of the landlord that the title of the agreement and the fact that the rental unit was furnished is sufficient to move this agreement from a residential tenancy agreement to “living accommodation occupied as vacation or travel accommodation.”
- The length of the fixed term (6 months) and the requirement that the tenant pay a security deposit of \$1100 is more consistent with a residential tenancy agreement than travel accommodation.
- The rental unit was the tenant’s primary residence and she worked while living in the residence.
- The landlord did not charge GST.
- I determined the attempt of the landlord to characterize this arrangement as Travel Accommodation is an attempt to avoid or contract out of the Act and as a result it is of no effect.

The tenant originally sought a tenant’s Order of Possession, An order that the landlord comply with the Act, regulations and/or tenancy agreement and an order that the landlord give her access to the rental unit. At the hearing she stated she no longer wishes to reside in the rental unit. As a result I dismissed the above claims. The tenant also sought an order that the landlord return personal property. The landlord returned personal property although the tenant testified that many items were not returned. I dismissed this claim with leave to re-apply. The parties arranged to have the goods returned on April 17, 2018 and there has been insufficient time for the tenant to itemized which goods are missing.

The tenant stated she is now seeking the following:

- Reimbursement of 6 days rent in the sum of \$425.81 for the 6 days she was blocked from the rental unit
- Aggravated damages in the sum of \$2000.

### Issues to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to an order for aggravated damages and if so how much?
- c. Whether the tenant is entitled to recover the cost of the filing fee?

### Background and Evidence:

The parties entered into a 6 month written tenancy agreement that provided that the tenancy would commence on December 1, 2017, end on May 31, 2018 and the tenant would have to vacate at that time. The rent was \$2200 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$1100 at the start of the tenancy.

The tenant gave the following evidence:

- On March 25, 2018 she was the victim of a domestic assault. The police were called and she was escorted to a transition house. Most of her belongings including medication were left in the rental unit. During the course of the domestic assault her boyfriend caused damage to the rental property.
- The next day the police contacted AM the representative of the landlord and requested that the landlord change the locks to the rental property. She testified the landlord changed the locks the next day.
- On March 27, 2018 she had a telephone conversation with AM who refused to provide her with a key to the rental unit until the damages had been paid in full.
- The tenant attached a text message to AM saying she was not able to make it to the bank prior to closing, requesting she be given until the next day and asking for an estimate. The evidence indicates he responded by saying "Sorry, I think this isn't going to work out."
- The landlord also produced evidence from her mother to her confirming that her daughter had received a message from RJF giving her notice he would be showing the unit at 5 p.m. that day. She phoned RJF and he acknowledged he made a mistake and this was sent to wrong person. The e-mail confirms that she received a telephone call from her daughter who told her that AM had spoke to her in an intimidating manner and was demanding \$3500 before she would be allowed back into the rental unit.

- The tenant also produced a text message from her ex boyfriend which stated her had been contacted by the police regarding the situation and he was told he should contact AM about paying the damages. He contacted AM who told her the tenant would have to come up with \$2000 for the damages and she would have to pay the rent of \$2200 5 days early before she would be allowed in. He asked AM for an estimate. AM hung up the telephone and hasn't responded to him.
- The tenant testified she believes her belongings were removed from the rental unit and put into storage sometime between March 25 and March 27, 2018.
- The tenant attended at the condo building on April 3 with two Vancouver police officers to pick up her belongings. The officers talked to the landlord and they were told by the landlord that there was nothing in the suite any longer and all of her possessions were in a storage locker somewhere.
- On April 12, 2018 the tenant received an email from the landlord asking about whether she wished to make arrangements to pick up her belongings. She responded saying that she did and the parties arranged for her to pick up her belongings on April 17, 2017.
- The tenant testified she moved into an Airbnb on March 28, 2018.
- The tenant testified the failure to allow her access to her rental unit and the failure to return the goods in a timely fashion has caused her significant damages. She works most weekends in promotional modelling and she was not able to access change of clothing. Further, her medication was included in the materials. She got a new prescription on March 28, 2018.
- The landlord has returned her possessions. However, many of the possessions are missing.

KH, the representative of the landlord gave the following evidence:

- That on March 26, 2018 the landlord received a call from the police asking the landlord to change the locks and advising the tenant was not going to return to the rental unit.
- The belongings were removed on April 9, 2018.
- The Residential Tenancy Act does not apply at this was a Travel Accommodation tenancy.
- The landlord produced an Estimate of the costs relating to the rental unit that claimed \$3715. It is dated April 5, 2018 and states it expires on April 12, 2018. It includes a charge of \$300 for cleaning services. The invoice in support of that charge is dated March 31, 2018. It also included a claim to pack all belongings and move to locker. There is no date on that invoice. .

Analysis:

After carefully considering all of the evidence I determined that the landlord denied the tenant access to her rental unit by refusing to provide the new key and also, denied the tenant access to remove her belongings. I find the evidence of the tenant more credible to that of the landlord for the following reasons:

- The oral testimony of the tenant that the landlord required she pay the cost of the damage prior to the landlord giving a key to the rental unit is supported by the evidence of her mother, text messages she sent to the landlord and a text an email from the ex-boyfriend.
- AM, the representative of the landlord was acting on behalf of the landlord in late March failed to attend the hearing and failed to provide sufficient evidence to dispute the testimony of the tenant.
- I do not find the testimony of the landlord credible when she testified the belongings were not removed from the rental unit until the middle of April as this evidence is inconsistent with some of the documents produced by the landlord.
  - The invoice of the cleaner produced by the landlord is dated March 31, 2018.
  - The Estimate produced by the landlord is dated April 5 2018. It makes a claim of \$160 for the cost to pack all belongings and move to locker.
- I do not accept the evidence of the landlord that the police told her that the tenant was not intending to move back into the rental unit. This is inconsistent with a request to change the locks. Even if the police had advised the landlord that the tenant was not intending to return it was incumbent on the landlord to confirm this with the tenant. The landlord and tenant had been communicating by e-mail, text messages and telephone and it would have been easy to confirm this.
- I am satisfied that the landlord refused to allow the tenant to returned to the rental unit and removed her belongings from the rental unit some time prior to March 31, 2018. for the following reasons

With regard to each of the tenant's claims I find as follows:

- a. The tenant claimed the sum of \$425.81 for being locked out of her rental unit for the last 6 days of March. The landlord is not responsible to the tenant having to vacate the rental unit because of the domestic assault. However, I find that the tenant was prepared to return to the rental unit on March 27, 2018 but was prevented from doing so. I determined the tenant is entitled to reimbursement of

the rent for 5 days from March 27, 2018 to March 31, 2018 in the sum of \$354.83.

- b. The tenant seeks compensation in the sum of \$2000 for aggravated damages.

Policy Guideline #16 includes the following:

“An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

- “Aggravated damages” are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.”

I determined the tenant is entitled to aggravated damages. The Tenant was legally entitled to be given a key to the rental unit so that she could regain possession without conditions. The manner in which the landlord acted in refusing to give the tenant access was totally inappropriate and highhanded. The landlord's conduct is further unacceptable as the landlord was aware the tenant was in a vulnerable position given the recent domestic assault. Further, I determined the landlord removed the tenant's belongings and denied her the ability to retrieve them until after April 12, 2018. I determined the landlord is not responsible for the period April 12, 2018 to April 17, 2018 as the landlord was prepared to return the belongings on April 12, 2018 but they were not able to arrange a time.

In the circumstances I determined the Tenant is entitled to aggravated damages in the sum of \$1200.

Conclusion

**I ordered the landlord(s) to pay to the tenant the sum of \$1554.83 plus the sum of \$100 in respect of the filing fee for a total of \$1654.83.**

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

**This decision is final and binding on both parties.**

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: April 30, 2018

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Residential Tenancy Branch