



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNDC

### **Introduction**

This hearing dealt with an application by the tenant, pursuant to the *Residential Tenancy Act*, for a monetary order for the return of rent after an unlawful eviction.

The landlord did not appear for the hearing. I accept the evidence of the tenant that the landlord was served with notice of this application and hearing by registered mail on September 21, 2017. Pursuant to section 90(a) of the *Act* I deem the landlord as having been served the documents on the fifth day after they were mailed or on September 26, 2017. A review of the tracking information indicates that the package was picked up on September 28, 2017.

The tenant attended the hearing and was given full opportunity to present evidence and make submissions. During the hearing the tenant requested for the recovery of the filing fee.

### **Issues to be decided**

Was the tenant unlawfully evicted? Is the tenant entitled to the recovery of the filing fee?

### **Background and Evidence**

The tenant testified that he moved into the basement of the home on March 01, 2016. The home is a three level home – the tenant occupied the basement and the landlord lived on the upper two floors with her family. The monthly rent was \$600.00 payable on the first of each month.

The tenant stated that the landlord admonished him for leaving the lights on at home while he was away at work. On or about March 08, 2016, the tenant left for work and inadvertently left the stove on.

The landlord noticed it and made a phone call to the tenant's father to let him know that his son was not going to be allowed to live in her home effective immediately. The landlord also forbade the tenant from returning to the rental unit and personally packed all the tenant's belongings into boxes. The landlord informed the tenant that he could come by escorted by the police and remove his belongings.

The tenant requested the return of his rent and the landlord refused his request. The tenant made application for dispute resolution shortly after but it was dismissed with leave to reapply because the tenant had not proven service of the notice of hearing on the landlord.

The tenant is requesting the return of rent in the amount of \$600.00 plus \$100.00 for the recovery of the filing fee.

### **Analysis**

Section 44 of the *Residential Tenancy Act* addresses how a tenancy ends as follows:

#### **How a tenancy ends**

- 44** (1) A tenancy ends only if one or more of the following applies:
- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
    - (i) section 45 [*tenant's notice*];
    - (i.1) section 45.1 [*tenant's notice: family violence or long-term care*];
    - (ii) section 46 [*landlord's notice: non-payment of rent*];
    - (iii) section 47 [*landlord's notice: cause*];
    - (iv) section 48 [*landlord's notice: end of employment*];
    - (v) section 49 [*landlord's notice: landlord's use of property*];
    - (vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];
    - (vii) section 50 [*tenant may end tenancy early*];
  - (b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
  - (c) the landlord and tenant agree in writing to end the tenancy;
  - (d) the tenant vacates or abandons the rental unit;

- (e) the tenancy agreement is frustrated;
- (f) the director orders that the tenancy is ended;
- (g) the tenancy agreement is a sublease agreement.

Based on the undisputed testimony of the tenant, I find that the landlord ended the tenancy by locking the tenant out, packing his belongings for him and allowing him to pick up his belongings only if escorted by police. I find that this method of ending the tenancy does not comply with the *Act* and accordingly I find that the tenant was unlawfully evicted.

The landlord had the option of serving the tenant with a notice to end tenancy and making application for an order of possession. Whatever the reason for ending the tenancy, the landlord chose to end the tenancy in an unlawful manner on March 08, 2016. The tenant testified that he had paid rent for March 2016 and his request for the return of rent was denied by the landlord.

Since I find that the tenant was unlawfully evicted, I also find that the tenant has proven his case and has established an entitlement for the return of rent in the amount of \$600.00 plus the recovery of the filing fee of \$100.00. Pursuant to section 67, I am issuing a formal order for payment in the total amount of \$700.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### **Conclusion**

I grant the tenant a monetary order for **\$700.00**.

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 10, 2018

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Residential Tenancy Branch