



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes**      CNC CNR MNDCT OLC LRE FFT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*

Both parties attended the hearing, and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord confirmed receipt of the tenant's amended application and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord served with the amended Application and evidence. The landlord did not submit any written evidence for this hearing.

Both parties confirmed at the beginning of the hearing that the tenancy has ended. As the tenancy has ended, the tenant's application is cancelled with the exception of the monetary claim and application to recover the filing fee.

Although the tenant applied for a Monetary Order of \$3,109.48 in their initial claim, since they applied another \$452.00 has been incurred in motel costs that were not included in the tenant's application. I have accepted the tenant's request to amend their original application from \$3,109.48 to \$3,561.48 to reflect the additional money paid by the tenant by the time this hearing was convened.

### **.Issue(s) to be Decided**

Is the tenant entitled to a monetary compensation for monetary losses or money owed under the *Act*, regulation, or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application?

### **Background and Evidence**

This month-to-month tenancy began approximately 3 years ago, with monthly rent set at \$600.00. The landlord had collected a security deposit of \$300.00 from the tenant, and still continues to hold that deposit.

The tenant, in this application, is applying for a monetary order in the amount of \$3,561.48 as set out in the table below for the losses associated with the end of this tenancy.

<b>Item</b>	<b>Amount</b>
Storage Costs	\$80.00
Motel Costs July 5-6	307.30
Motel Costs July 6-12	896.70
Motel Costs July 13-14	176.28
Motel Costs July 15-21	474.60
Motel Costs July 22-28	474.60
Motel Costs July 29-August 14	452.00
Aggravated Damages	1,000.00
Return of Security Deposit	300.00
Less rent for July 2018	-600.00
<b>Total Monetary Order Requested</b>	<b>\$3,561.48</b>

On June 9, 2018 the tenant was admitted to the hospital. The landlord issued the tenant a 1 Month Notice to End Tenancy on June 20, 2018 as the landlord discovered bed bugs in the tenant's rental unit. On June 21, 2018 the landlord issued a 10 Day Notice for Unpaid Rent. On July 2, 2018 the tenant's former employer informed him that his belongings have been removed from his rental unit by the landlord, and he was informed by his landlord that he was not allowed back. The tenant was discharged from the hospital on July 5, 2018, and as he was not allowed back into his rental unit, the tenant has been staying in various short-term accommodation since he was discharged from the hospital. The tenant testified that he had attempted to pay the landlord the June 2018 rent on June 21, 2018 and June 22, 2018, but the landlord refused to accept his payment.

The tenant testified that he mitigated his losses and completed an application for new housing on July 12, 2018. The tenant has been actively looking for new housing, and at the time of the hearing confirmed that he found housing as of August 15, 2018. The tenant applied for reimbursement of housing and storage costs for the period that he was homeless due to the landlord's actions. The tenant is also applying for \$1,000.00 in aggravated damages as the landlord ended this tenancy without his permission while he was in the hospital, and as a result the tenant was extremely distraught.

The landlord confirmed in the hearing that the tenant's belongings were removed while the tenant was in the hospital as the landlord discovered that the tenant's unit was infested with bed bugs. The landlord testified that she wanted to end the tenancy as the tenant was "not safe to be here". The landlord testified that the tenant was found collapsed in the shared bathroom, and another tenant had to call an ambulance. The landlord considered the tenancy over in June 2018 when the tenant was admitted to the hospital. The landlord testified that the tenant's belongings were removed for the purpose of treating the bed bugs, and that the unit remained vacant for four months after.

The landlord's witness PD attended the hearing and testified that the building was contaminated with bed bugs, and the landlord's actions were for the safety and well-being of all the tenants.

## **Analysis**

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove, on a balance of probabilities, that the landlord caused her a loss of her personal property and the amount of such loss.

The tenant seeks a monetary order for the losses that he incurred as a result of the landlord's actions.

Residential Tenancy Branch ("RTB") Policy Guideline 16 states the following with respect to types of damages that may be awarded to parties:

*An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award "nominal damages", which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.*

I accept the tenant's undisputed evidence that his belongings were removed without his permission, and that he had to find new housing after the landlord prohibited him from re-entering the rental unit after he was discharged from the hospital. I find that the landlord breached section 31 of the *Act*, which prohibits the landlord from changing the locks without providing a new set of keys to the tenant. I find that the landlord also breached section 44(1) of the *Act*, which states that proper notice must be given to the tenant in ending this tenancy unless both parties mutually agree to end this tenancy, or unless the tenant vacates or abandons the rental unit. I find that the tenant was denied lawful access to his rental unit while this tenancy was still in place.

The undisputed testimony of the tenant was that although he was served with a 1 Month Notice to End Tenancy and a 10 Day Notice to End Tenancy, the landlord had arbitrarily decided to take vacant possession of the rental unit without obtaining an Order of Possession or his mutual agreement to do so. I accept the tenant's evidence that he was rendered homeless, and despite his efforts to obtain new housing, he had no choice but to find temporary accommodation.

I have considered the testimony and submissions of all the parties in this hearing, as well as the evidence submitted, and I find that the tenant had provided sufficient evidence to support that the landlord failed to fulfill their obligations as required by sections 31 and 44(1) of the *Act* as stated above. From the testimony provided in this hearing, I find that the tenant faced extreme distress as a result of the landlord's actions. Accordingly I find the tenant is entitled to a monetary award for the losses incurred due to the landlord's failure to abide by sections 31 and 44(1) of the *Act*.

I find that the tenant provided sufficient and detailed evidence to support the value of the monetary loss claimed by the tenant. I am satisfied that the tenant had made an effort to mitigate the landlord's exposure to the tenant's monetary losses as is required by section 7(2) of the *Act*. I find that the tenant's monetary claim for the reimbursement of housing costs to be reasonable considering that the tenant was locked out of his rental unit in a manner that contravened the *Act*, and I find that the tenant had made efforts to find new housing in order to mitigate his losses. I find that the tenant's belongings were removed by the landlord without his permission or an Order by an Arbitrator. Accordingly, I find that the tenant is entitled to a monetary order in satisfaction of the monetary loss suffered by the tenant due to the landlord's failure to comply with sections 31 and 44(1) of the *Act*. I allow the tenant to recover the cost of housing and storage as claimed in his application, less the deduction for July 2018 rent as agreed to by the tenant in his application.

In addition to other damages an arbitrator may award aggravated damages. These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Intangible losses for physical inconvenience and discomfort, pain and suffering, loss of amenities, mental distress, etc.) Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's behaviour. They are measured by the wronged person's suffering.

The damage must be caused by the deliberate or negligent act or omission of the wrongdoer. However, unlike punitive damages, the conduct of the wrongdoer need not

contain an element of wilfulness or recklessness in order for an award of aggravated damages to be made. All that is necessary is that the wrongdoer's conduct was highhanded. The damage must also be reasonably foreseeable that the breach or negligence would cause the distress claimed.

They must also be sufficiently significant in depth, or duration, or both, that they represent a significant influence on the wronged person's life. They are awarded where the person wronged cannot be fully compensated by an award for pecuniary losses. Aggravated damages are rarely awarded and must specifically be sought. The damage award is for aggravation of the injury by the wrongdoer's highhanded conduct.

The tenant requested \$1,000.00 for aggravated damages. Although I sympathize with the tenant, I find that the tenant failed to establish how his suffering was specifically due to the deliberate or negligent act or omission of the landlord. On this basis I dismiss the tenant's monetary claim for aggravated damages. Furthermore, I find that he did not establish how this estimate was obtained, either referenced and supported by similar claims of this nature, or by providing pay stubs, receipts, statements, or written or oral testimony to support the aggravated damages the tenant is seeking in this application. As per RTB Policy Guideline 16, where no significant loss has been proven, but there has been an infraction of a legal right, an arbitrator may award nominal damages. Based on this principle, I award the tenant nominal damages of \$300.00 for the distress he suffered due to the landlord's contravention of the *Act* in ending this tenancy.

I note that the landlord still holds the tenant's security deposit for this tenancy. As this tenancy ended in June 2018, and the landlord did not apply for dispute resolution to obtain authorization to retain any portion of the tenant's security deposit, I find that that the tenant is entitled to the return of his \$300.00 security deposit.

I find that the tenant's application has merit, and he is entitled to recover the filing fee for this application.

### **Conclusion**

I issue a monetary order in the tenant's favour in the amount of \$2,861.48 against the landlord as set out in the table below for the failure of the landlord to comply with sections 31 and 44(1) of the *Act*.

<b>Item</b>	<b>Amount</b>
Storage Costs	\$80.00
Motel Costs July 5-6	307.30
Motel Costs July 6-12	896.70
Motel Costs July 13-14	176.28
Motel Costs July 15-21	474.60
Motel Costs July 22-28	474.60
Motel Costs July 29-August 14	452.00
Nominal Damages	300.00
Return of Security Deposit	300.00
Less rent for July 2018	-600.00
<b>Total Monetary Order Requested</b>	<b>\$2,861.48</b>

The tenant is provided with a monetary order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of the tenant's application was cancelled.

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 25, 2018

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Residential Tenancy Branch