



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC

### Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking a monetary order for losses or compensation under the Act and tenancy agreement.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

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.

### Issue(s) to be Decided

Is the Tenant entitled to monetary compensation from the Landlords?

### Background and Evidence

These parties have been to one prior hearing, under a different file number, on July 8, 2011 (the "First Hearing"). In the First Hearing the Landlord was granted an order of possession for the rental unit effective on July 31, 2011.

Several of the claims the Tenant made in this Application had been already made in the First Hearing and were dismissed without leave at that time. I explained to the Tenant during this hearing that I could not go back and change the outcome of the First Hearing, and that he could not again make the claims that had been dismissed in the First Hearing in this present Application. I also note the Tenant has a limited understanding of English.

Therefore, I find that the Tenant has one claim in this matter which must be heard.

On July 31, 2011, the Tenant was in the process of vacating the rental unit under the order of possession granted to the Landlord in the First Hearing.

The Tenant has some medical issues which were slowing him down. The Tenant provided proof of these medical problems in evidence for this Application, in the form of notes and records from his Doctor.

The Tenant had asked the Landlords to give him “a bit of a break”, in other words, to delay his eviction, as he was having trouble finding a new rental unit and his medical condition was slowing him down in moving out.

On August 1, 2011, the Landlords began to remove the Tenant’s personal property from the rental unit and place it in the backyard of the rental unit property. The Tenant testified that the Landlords were throwing some of his property into the garbage as they went along.

The Tenant was upset with this and the behaviour of the Landlords. There was an argument between the parties and the police were called and attended the rental unit.

According to the testimony and evidence of the Landlords, the police informed the Landlords that since they had the arbitration papers (from the First Hearing) they were allowed to remove the property.

The Agent for the Landlord, who testified he was at the rental unit at the time the police attended, testified that the police had actually told the Landlords they had to get a bailiff to remove the Tenant. The Agent testified that the police also told the Landlords they could put the Tenant’s property in the backyard if it was protected.

The Landlords moved the Tenant’s property into the backyard of the rental unit. Although the Landlords allege they did this neatly and covered the property with a tarp, the photographs of the Tenant indicate the property was thrown into piles and not covered.

The Tenant alleges that the sister of the Landlord turned a water hose onto his personal property, destroying his books and other items.

In evidence the Tenant submitted photographs of his property in the backyard of the rental unit. It appears to have been thrown in a pile, with damage to the furniture, books and bookcases.

The parties also agreed that the Landlords had not returned the Tenant's security deposit of \$150.00.

### Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find that the Landlords have breached section 57(2) of the Act, by taking actual possession of the rental unit without obtaining a writ from Supreme Court to do so.

Section 57(2) of the Act states:

The landlord must not take actual possession of a rental unit that is occupied by an overholding tenant unless the landlord has a writ of possession issued under the Supreme Court Civil Rules.

The Agent for the Landlord testified the police had informed the Landlords they required a bailiff to remove the Tenant. The Landlords should have heeded this advice.

Furthermore, the Landlords had no right or authority to remove the Tenant's personal property from the rental unit. It clearly had not been abandoned as the Tenant was still present in the rental unit.

I find that the Landlords acted in a high handed manner in their treatment of the Tenant and his property. They ignored the requirement to obtain a writ and did not use a bailiff to remove the Tenant or his proeprty, as required under the Act.

Although the Tenant has claimed for \$5,400.00 for his losses, I find that he has insufficient evidence to support this entire amount in his claim.

Based on the household items in the photographs and previous experience in these types of claims, I find that the more appropriate amount of loss is **\$2,500.00**

I also find that the Landlords failed to return the security deposit or make a claim against it, within 15 days of the end of the tenancy or the receipt of the Tenant's forwarding address on this Application. Therefore, I order the Landlords to pay the Tenant double the security deposit, pursuant to section 38 of the Act, in the amount of **\$300.00**.

Therefore, I find the Tenant has established a total monetary claim against the Landlords in the amount of **\$2,800.00**, and I grant him a monetary order. The Tenant

must serve the Landlords with a copy of this order as soon as possible and the order is enforceable in the Provincial Court.

### Conclusion

The Landlords breached the Act by removing the Tenant and his property from the rental unit without a writ from the Supreme Court. I find the Landlords acted in a highhanded manner towards the Tenant.

The Tenant is granted a monetary order in the amount of **\$2,800.00**, which is enforceable against the Landlords in Provincial Court.

This decision is final and binding on the parties, except as otherwise provided under the Act and 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: November 15, 2011.

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Residential Tenancy Branch