



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNDC

### Introduction

This matter dealt with an application by the Tenant for compensation for expenses and aggravated damages she said she sustained as a result of the Landlord terminating the tenancy agreement on or about the date she was to take possession of the rental unit. On December 1, 2009, the Parties in this matter were involved in hearing of an application by the Landlord for a loss of rental income however that application was dismissed due to the finding by the Dispute Resolution Officer that the Landlord was not entitled to rescind the tenancy agreement. The Landlord applied for Judicial Review of that Decision in late December of 2009.

At the beginning of this hearing counsel for the Landlord advised me that the hearing of Landlord's Judicial Review application is still pending, that he is actively pursuing it and that he is now in a position to request a hearing date. Counsel for the Landlord also claimed that if the Tenant's application were to proceed today as scheduled, he would seek to have any Order stayed until the hearing of the Landlord's Judicial Review Application.

The advocate and agent for the Tenant argued that the Landlord was seeking to delay this matter and that it would be a hardship for the Tenant if her application was delayed until the hearing of the Landlord's Judicial Review application. The Tenant's agent and advocate also claimed that the Tenant's health is failing due to the stress of waiting for this matter to be heard.

RTB Rule of Procedure 6.4 sets out the criteria for granting an adjournment as follows:

"Without restricting the authority of the Dispute Resolution Officer to consider other factors, the Dispute Resolution Officer must apply the following criteria when considering a party's request for an adjournment of the dispute resolution proceeding:

- a) the oral or written submissions of the parties;
- b) whether the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1 [objective and purpose];
- c) whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding;

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d) the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and

e) the possible prejudice to each party.”

I find that it would be impractical to hear the Tenant’s application until there has been a determination on Judicial Review as to whether the previous Decision should be upheld or not. In other words, if the Tenant was granted compensation today based on the finding in the previous Decision that the Landlord was not entitled to rescind the tenancy agreement and later on Judicial Review the previous Decision was found to be in error and vacated or sent back for re-hearing, then any compensation Order made in this matter would either be set aside or stayed pending the re-hearing of the Landlord’s application.

While I have considered the Tenant’s concern that the Landlord did not seek a date for the hearing of her Judicial Review until almost 6 months after having filed her Petition, I accept the evidence of counsel for the Landlord that the delay was caused in part by having to wait for documents from the Attorney General of B.C. which he has only just received. Consequently, in order to address the Tenant’s concern about the Landlord’s delay, **I ORDER the Landlord or her counsel to provide the Residential Tenancy Branch with written confirmation of the date set for the hearing of her Judicial Review Application no later than 4:00 p.m. on Tuesday, August 3, 2010.**

Following the date the RTB receives written confirmation of the date scheduled for the Judicial Review application or August 3, 2010 (whichever is earlier), new Notices with the date for the Reconvened Hearing will be sent to each of the Parties.

Should urgent circumstances arise that necessitate obtaining the Tenant’s evidence at an earlier date, the Tenant’s agent may request an earlier date for hearing by contacting the Residential Tenancy Branch and upon providing written evidence of the urgent circumstances. If the Tenant’s agent does this, however he may wish to consider having an Official Record made (pursuant to RTB Rule of Procedure 9.2) in the event, for example, that the Dispute Resolution Officer hearing the Tenant’s oral evidence on that day was not available at the time when the hearing is actually concluded.

Alternatively, the Tenant’s agent may wish to obtain a sworn statement from the Tenant such as an affidavit but should obtain independent advice about the weight that can be given to such evidence when the deponent is not available to be cross-examined on that statement by the other Party.



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## Conclusion

The Tenant's application is adjourned. Notices setting out the date and time of the reconvened hearing will be mailed to each of the 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: July 20, 2010.

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Dispute Resolution Officer