



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      CNR, MNDC, O, & FF

### Introduction

This hearing dealt with application by the tenant seeking to dispute a 10 day Notice to End Tenancy Due to Unpaid Rent. The tenant also seeks a monetary claim related to loss of use of the rental unit, loss of quiet enjoyment, moving expenses and aggravated damages.

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

### *Preliminary Issues:*

The tenant made a request for an adjournment at the start of the dispute resolution hearing. The tenant stated that he misunderstood the dispute resolution process and did not realize he was required to provide evidence at least 5 days prior to the hearing. The tenant stated that he realized his mistake when he received evidence from the landlord by fax on December 2, 2010.

Rule 3.1 states that an applicant to a dispute resolution hearing must provide a copy of the following to the respondent:

- the notice of dispute resolution proceeding letter provided to the applicant by the Residential Tenancy Branch;
- the dispute resolution proceeding information package provided by the Residential Tenancy Branch;
- the details of any monetary claim being made, and
- any other evidence accepted by the Residential Tenancy Branch with the application or that is available to be served.

The tenant provided the landlord only with a copy of the application, the dispute resolution proceeding information package, including the notice of hearing and an

outline of the monetary claim being made. No particulars of the tenant's monetary claim were ever provided to the respondent or the Residential Tenancy Branch.

The landlord did submit evidence; however, it was also submitted outside of the time frame provided by 4.1 of the rules of procedure. In addition, the landlord's evidence was not served upon the tenant until December 2, 2010 when it was faxed to the tenant's place of employment. The landlord stated that he could not serve the tenant because the tenant vacated the rental unit and did not provide a forwarding address. The landlord did not indicate why the evidence was provided to the Residential Tenancy Branch late.

In considering the tenant's request for an adjournment, I am guided by rule 6 which provide that a dispute resolution hearing may be adjourned three days prior to the scheduled hearing if the consent of the other party is given. In the event that the other party does not consent to an adjournment, a party may request an adjournment by disclosing the circumstances beyond their control necessitating the adjournment.

In assessing whether an adjournment request should be granted the following criteria can be considered pursuant to rule 6.4:

- 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];
- 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;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and
- the possible prejudice to each party.

I have denied the tenant's request for an adjournment of this hearing. I find that the need for the adjournment rises due to the tenant's failure to diligently pursue his claim. The tenant filed the application but then failed to provide any particulars to the landlord and vacated the rental unit. By these actions, the tenant left the landlord with no means to reasonably respond to the claim being made against him. The tenant had multiple options available to him prior to the hearing to delay, withdraw or cancel this proceeding. In addition, the hearing was schedule very quickly due to the tenant seeking to cancel the 10 day Notice to End Tenancy which was unnecessary since the tenant vacated the rental unit almost immediately after filing this application.

The tenant's failure to diligently pursue this application and failure to provide the landlord with a reasonable means to respond to this claim are highly prejudicial to the landlord and fly in the face of natural justice or administrative fairness. Therefore, I denied the tenant's request for an adjournment. I proceed with this hearing solely on the oral testimony of the parties as I also did not accept the late evidence submissions from the landlord.

#### Issue(s) to be Decided

Has the tenant established that the landlord breached section 32 of the *Act* resulting in loss of use and loss of quiet enjoyment of the rental unit?

#### Background and Evidence

The tenant and the landlord entered into a tenancy agreement approximately May 2010. The tenant stated that within 6 days of the start of the tenancy he began to have serious concerns about the rental unit.

The tenant stated that he learned that the rental unit had formerly been a 'crack house' and also had issues related to theft. According to the tenant, the landlord offered to release the tenant from the lease at that point, but the tenant remained at the rental unit because the landlord made some improvements like installing a better fence in the back of the property.

The tenant stated that as the tenancy progressed into the fall, moisture problems became more evident and he became concerned about possible health issues related to mould. The tenant stated that the floor in the bathroom was rotting out, that the laminate floors in the rental unit were buckling due to moisture, and that mould was developing in one of the bedrooms. In addition, the handles for the bath tub fell off one day. The tenant stated that a general contractor told him that the rental unit was unsafe and the tenant stated that it had become uninhabitable. The tenant stated that the issue related to lack of vapour barrier and insulation.

The tenant stated that the landlord refused to address his concerns and request for remediation and he decided to withhold his monthly rent for November 2010. This resulted in the landlord issuing the 10 day Notice to End Tenancy and the tenant decided to vacate the rental unit. The tenant confirmed he vacated the rental unit as of November 13, 2010.

The landlord denies the tenant's oral evidence. The landlord argued that the rental unit has been fully remediated prior to the tenant occupying the unit and it meets all housing and safety regulations. The landlord stated the rental unit was inspected by a qualified remediation company and that this inspection confirmed that there are no moisture or mould issues with the rental unit.

### Analysis

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard.

To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

First proof that the damage or loss exists, secondly, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, thirdly, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and lastly proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In the circumstances before me the tenant and the landlord have failed to provide any documentary evidence. The only evidence before me is the disputed oral testimony of the tenant and the landlord. Although the landlord attempted to bring forward a witness, the landlord failed to inform me at the onset of the hearing that the witness was on the telephone conference call and had silently heard all of the testimony presented by the landlord and possibly by the tenant (I did not confirm whether the witness was on speaker phone or just present with the landlord hearing one side of the conversation). Regardless, due to the witness being present while the evidence was being presented by the landlord, I found that I could not place any weight on the potential evidence of the witness, because the witness evidence has been prejudiced.

I find that, in any dispute when the evidence consists of conflicting and disputed verbal testimony, in the absence of independent documentary evidence, then the party who bears the burden of proof cannot prevail on the balance of probabilities. Therefore it is not necessary for me to determine credibility or assess which set of "facts" is more believable because dispute oral testimony does not sufficiently meet the burden of proof.

Conclusion

I find that the tenant has failed to establish a monetary claim due to a breach of the tenancy agreement by the landlord and I dismiss the tenant's application without leave to re-apply. As the tenant vacated the rental unit, it is not necessary to deal with the tenant's request to set aside the 10 day Notice to End Tenancy Due to Unpaid Rent.

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: December 06, 2010.

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Dispute Resolution Officer