



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes MT, CNC, MNDC, OLC, OPT, SS, FF

### Introduction

This hearing dealt with the applicant's Application for Dispute Resolution seeking more time to cancel a notice to end tenancy; to cancel a notice to end tenancy; an order to have the landlord comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement; an order of possession; an order for substituted service and a monetary order.

The hearing was conducted via teleconference and was attended by the applicant only.

The applicant testified the respondents were served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Act* by registered mail on December 8, 2012 in accordance with Section 89. As per Section 90, the documents are deemed received by the respondents on the 5<sup>th</sup> day after it was mailed.

Based on the testimony of the applicant, I find that the respondents have been sufficiently served with the documents pursuant to the *Act*.

At the outset of the hearing the applicant confirmed that he had not ever received a notice to end tenancy but that he was physical removed from the property by police and that he no longer lives at the dispute address. As a result, the applicant agreed there was no longer a need for more time to apply to cancel a notice to end tenancy; to cancel a notice to end tenancy; to have an order to have the landlord comply with the *Act*, regulation or tenancy agreement; or for the applicant to obtain an order of possession.

In addition, the applicant testified that he sought an order allowing him to serve the respondent with notice of this hearing and his evidence via registered mail because he did not serve the party using a bailiff. I advised the applicant that registered mail is an acceptable method of service for these documents.

As such, I amend this Application to exclude any matters of possession; notices to end tenancy; or orders for substituted service or to have the landlord comply with the *Act*, regulation or tenancy agreement.

### Issue(s) to be Decided

The issues to be decided are whether the applicant is entitled to a monetary order for compensation for damage or loss resulting from a tenancy, pursuant to Sections 67, and 72 of the *Act*.

### Background and Evidence

The applicant submits that he had loaned the respondents money in the amount of \$20,000.00 for the operations of a film studio and that as a condition of that loan the respondents provided the applicant with office space. The applicant further testified that the respondents had agreed to pay the respondent \$24,000.00 to repay the loan and that they had provided him with a post-dated cheque.

The applicant testified that he has never been able to cash the \$24,000.00 cheque and when he found this out he moved in to space on the property and he has lived there since. The applicant testified that he had no tenancy agreement in writing but that after the respondents filed for bankruptcy the bank asked the applicant to remain on the property to take care of it.

### Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Despite providing no documentary evidence of a loan, I accept based on the undisputed testimony of the applicant, that the respondents may owe the applicant money for a loan that he may have provided them. However, I find the applicant has failed to establish that a residential tenancy existed between the parties.

In addition, even if the applicant had provided sufficient evidence to establish that a residential tenancy existed, the applicant, by his own testimony, stated the monies he is seeking are related to a loan for operating a move studio. As such, I find the damage or loss the applicant seeks compensation for does not result from a violation of the *Act*, regulation or tenancy agreement.

After I advised the applicant during the hearing that as a result of these findings I would be declining jurisdiction in these matters, he submitted that the loan payment was should considered to be a pre-payment of rent. However, as the applicant had already identified that monies were provided to the respondents for an operating loan and not for pre-paid rent it cannot be considered rent under any circumstances; further the applicant did not provide any evidence that a residential tenancy existed at any time between the named parties.

#### Conclusion

For the reasons noted above, I decline jurisdiction on the matters in this Application.

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: January 07, 2013.

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Residential Tenancy Branch

