



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") for a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The tenant testified that he served the landlord with his Application for Dispute Resolution by registered mail on January 9, 2015. He provided a Canada Post tracking number as evidence of this mailing. The landlord confirmed that she received the Application. I find the landlord deemed served with the tenant's Application for Dispute Resolution on January 14, 2015. The landlord testified that she submitted evidence to the Residential Tenancy Branch to support her position. However, she testified that she did not provide these materials to the tenant. She testified that she believed he "should have known about them" and that she didn't think it was necessary for the tenant to look at the materials.

The Dispute Resolution Rules of Procedure ("Rules of Procedure") provide that, to ensure fairness in the dispute resolution process, a respondent's evidence must be received by the Applicant and the Residential Tenancy Branch at least 7 days prior to the hearing date (Rule 3.15).

3.16 At the hearing, the respondent must be prepared to demonstrate to the satisfaction of the Arbitrator that each applicant was served with all their evidence, as required by the *Act*.

When evidence is served improperly, or the respondent fails to serve their evidence, that evidence may not be considered at the hearing or the hearing may be adjourned.

As a result of my finding that the landlord/respondent failed to serve her evidence to the tenant, the landlord requested an adjournment of the hearing.

Preliminary Issue: Adjournment Request by Landlord

Rule 6 of the Rules of Procedure state that the “Residential Tenancy Branch will reschedule a dispute resolution proceeding if written consent from both the applicant and the respondent is received by the Residential Tenancy Branch before noon at least 3 business days before the scheduled date for the dispute resolution hearing”. In this case, the landlord provided no notice of an adjournment application prior to the hearing to either the tenant or to the Residential Tenancy Branch.

The criteria provided for granting an adjournment, under Rule 6.4 of the Rules of Procedure are;

- 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...
- whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether the party had sufficient notice of the dispute resolution hearing...
- 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.

The landlord testified that she required time to provide materials in response to the tenant’s original application. The tenant provided testimony and evidence that shows the landlord was deemed served with the tenant’s Application for Dispute Resolution on January 14, 2015. Therefore, based on the materials provided by the tenant, his testimony and the nature of this application, I find that the landlord was aware of the case against her in this matter.

The landlord testified she submitted evidence to the Residential Tenancy Branch to support her position but that she did not provide these materials to the tenant, claiming that she didn’t think it was necessary for the tenant to look at the materials as he should have known the contents. The requirements for service do not allow for discretion to the party submitting evidence. There must be no question that both parties must be fully

aware of the case they have to meet and be sufficiently served with all of the other party's materials.

The tenant opposed the landlord's application for an adjournment. While the landlord will be hindered in her ability to respond to the tenant's application, the landlord's need to adjourn this hearing arises out of her own neglect in failing to serve or attempt to serve the tenant with her materials. I accept the tenant's testimony that he would be prejudiced by a delay in this hearing. The tenant took the required steps in serving materials to the landlord within the timeline provided by the *Residential Tenancy Act*. The Notice of Hearing that forms the main page of the materials sent to each party clearly states,

*Evidence to support your position is important and must be given to the other party and to the Residential Tenancy Branch before the hearing. Instructions for evidence processing are included in this package. Deadlines are critical.*

The landlord was not able to identify any compelling reason why she should be provided with an adjournment to allow further time for service of her documents. The landlord should have been aware of the requirements in submitting evidence for this hearing. To adjourn the hearing with the sole purpose of allowing the landlord a further opportunity to serve her evidence does not align with the principles and objectives of the dispute resolution process. The landlord's need for this adjournment arises directly out of her own neglect. I deny the landlord's application for an adjournment.

#### Issue(s) to be Decided

Is the tenant entitled to a monetary award for damage or loss under the *Act*, regulation or tenancy agreement?

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

#### Background and Evidence

This tenancy began in 2010 as a fixed term tenancy. Over several years, the tenancy was renewed as a one year fixed term. The rental amount for this unit was \$3230.00 payable on the first of each month. The tenant testified that he vacated the rental unit on April 27, 2015 after receiving a 2 Month Notice to End Tenancy for Landlord's Use of Property ("the 2 Month Notice"). The tenant testified that his security deposit of \$1500.00 was returned to him in full. The tenant also testified that April 2015 rent was

waived by the landlord pursuant to section 51 of the *Act* with respect to compensation to the tenant for a notice to end tenancy for landlord's use of the property.

A copy of the 2 Month Notice was submitted by the tenant. It provides one ground for the Notice to End Tenancy: "That the landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant". The landlord testified that she lives overseas and that she was advised by the property management company for the building of a large and substantial leak in the rental unit. She testified that the leak was in the bathroom and that it required substantial repair, taking approximately 6 weeks to complete. She also testified that she was concerned about mold and other issues in the 5 year old rental unit. She testified that she was satisfied with the tenant and had no reason to end his tenancy but for the extensive nature of the repairs required for the rental unit. The tenant testified that, while there were repairs to be done, the residence was brand new when he moved in.

The tenant testified that the only issues to be addressed in the rental unit related to the leak in the bathroom. He also testified that he had advised the landlord, by email and through the landlord's agent, of the leak on several occasions over the years of his tenancy. He provided the dates of his correspondence on this issue including; June 2010, twice in July 2011, twice in 2013 and February 2014.

The tenant also testified that he is not certain what, if any repairs were done. Other than her sworn testimony, the landlord has provided nothing admissible at this hearing for review or proof of repairs. The landlord has testified that there were extensive repairs required in the bathroom and that she wanted the unit vacant to inspect it fully. The tenant testified that there was a second washroom in the rental unit that could have continued to accommodate him to remain in the residence while repairs were ongoing. The tenant also submitted that he would have vacated the unit temporarily if asked to do so by the landlord.

The tenant submitted that the landlord could have done these repairs in a timely manner resulting in less damage and potential work. He also submitted that he could have remained in the rental unit while the repairs were done. He stated that he is doubtful that repairs have been done, and he submitted that those repairs did not require him to vacate the rental unit permanently.

## Analysis

The tenant seeks compensation under section 51(2) of the *Act* that states,

**51 (2)** In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice,... or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

The tenant confirmed that he was provided with the equivalent of one month's rent by withholding the last month's rental amount. The tenant testified that he believes steps have not been taken to accomplish the stated purpose for which the tenancy was ended. He sought \$6460.00, the amount of two month's rent payable under this tenancy agreement, pursuant to section 51(2) of the *Act*. In this application, the burden falls to the applicant/tenant to provide evidence to show that the landlord has failed to act in accordance with the stated objectives provided on the 2 Month Notice to End Tenancy.

Landlords have an obligation to repair and maintain a rental unit so that it complies with health, safety and housing standards required by law. However, the landlord is not at liberty to end a tenancy to meet these obligations. These obligations are part of the tenancy agreement. The reason given to end the tenancy on the 2 Month Notice in this case is based upon section 49(6)(b) of the *Act* which provides:

(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

(b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;

[emphasis added]

The tenant disputed whether the landlord undertook repairs to the rental unit. The tenant was served with a 2 Month Notice to End Tenancy citing section 49(6)(b) of the *Act* prior to choosing to vacate the residence. The tenant could have applied under the *Residential Tenancy Act* to dispute that notice. Instead, the tenant chose to vacate the residence. The landlord provided the equivalent of one month's rent to the tenant as required under section 51(1) of the *Act*.

To receive compensation under section 51(2) of the *Act*, the tenant must show that the landlord did not take steps to accomplish the stated purpose for ending the tenancy. I find the landlord has provided some evidence, in her testimony that she undertook the repairs within the six months of the effective date of the 2 Month Notice. The landlord provided undisputed sworn testimony that there was a leak that required repair in the rental unit. The tenant's testimony supported this fact; he stated he had attempted to advise the landlord with respect to the leak on numerous occasions.

The tenant must also show that the rental unit was not used for the stated purpose for at least six month beginning within a reasonable time period after the effective date of the notice. The tenant testified that he vacated the unit on or about the effective date of the 2 Month Notice, in February 2015. The landlord testified that repairs began shortly after the tenant vacated the rental unit because the leak situation had become urgent.

While the tenant's testimony contradicts the testimony of the landlord regarding the steps she has taken to renovate or repair the rental unit, he has provided no further evidence that supports a finding that, on a balance of probabilities, the landlord did not take any steps to repair the rental unit as indicated in the 2 Month Notice. The tenant testified that it was not necessary for the rental unit to be vacant for the repairs to take place within the unit. The matter of the need to vacate the rental unit is a consideration when a tenant disputes a 2 Month Notice of the type issued by the landlord in this case. However, the primary issue in determining if a tenant is entitled to compensation under section 51(2) of the *Act* is whether the landlord has failed to act in accordance with the reason stated on the 2 Month Notice. Nothing beyond the conflicting testimony of the landlord and tenant in this application provides evidence to support the claim that the landlord has not repaired the rental unit or that the repairs have been unreasonably delayed.

I find the tenant has not met his burden to provide evidence to show that the landlord has failed to act in accordance with the stated objectives provided on the 2 Month Notice to End Tenancy.

As the tenant has not been successful in his application, he is not entitled to recover the filing fee from the landlord.

Conclusion

I dismiss the tenant's application for compensation pursuant to section 51(2) of the *Act* and his application to recover the filing fee for 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: May 7, 2015

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Residential Tenancy Branch

