



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, MND, MNDC, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for:

- an Order of Possession for cause pursuant to section 55;
- a monetary order for damage or loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant 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 was assisted by an advocate.

### Preliminary Issue – Impartiality

At the hearing, I advised both parties (tenant and landlord) that the tenant's advocate and representative assisting at this hearing is a former coworker of mine. I explained to the parties the scope of my relationship with this advocate – that the advocate and I were both employees of the same organization.

I expressed my position that I would be able to conduct the hearing in an unbiased and impartial manner notwithstanding the fact that tenant's advocate and I were once coworkers. I asked the parties for their submissions on the issue and if either party wished to raise any objections to my conduct of this hearing. Both parties consented to the hearing proceeding before me.

On the basis that I have no vested interest in the outcome of this matter, that I am required to decide hearings in an unbiased manner, and that both parties consented, I determined that I was able to conduct the hearing.

### Preliminary Issue: Service of Documents

At this hearing, the landlord initially testified that he served the tenant with the 1 Month Notice to End Tenancy ("1 Month Notice") on June 18, 2015 by delivering it in person. After examination of his Application for Dispute Resolution, the landlord testified that he delivered the 1 Month Notice to the tenant in person on June 10, 2015 as stated on his application. Under cross examination by the tenant's advocate, the landlord testified again that he had delivered the 1 Month Notice to the tenant in person on June 10, 2015. The tenant's advocate submitted that, as the landlord's 1 Month Notice was dated June 17, 2015, it was impossible that he had served the notice 7 days prior. With a further opportunity to explain the service of the 1 Month Notice to the tenant, the landlord did not provide a clear date, time or other details of the personal service.

Residential Tenancy Policy Guideline No. 12 provides guidance with respect to the service requirements under the *Act*. Generally, pursuant to the Policy Guidelines, the *Act* and the Dispute Resolution Rules of Procedure, an applicant must be prepared to prove service to the satisfaction of the arbitrator. In this case, the landlord is responsible to provide evidence, under oath of the details of service including the location, date and time of service.

Rule 3 of the Dispute Resolution Rules of Procedure provides the requirements of service of documents for dispute resolution hearings.

#### **3.1 Documents that must be served**

The applicant must, within 3 days of the hearing package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the application for dispute resolution
- b) the notice of dispute resolution proceeding letter provided to the applicant by the Residential Tenancy Branch;
- c) the dispute resolution proceeding information package provided by the Residential Tenancy Branch;
- d) a detailed calculation of any monetary claim being made;
- e) a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and

f) any other evidence, including evidence submitted to the Residential Tenancy Branch with the application for dispute resolution, in accordance with Rule 2.5 [*Documents that must be submitted with an application for dispute resolution*].

e) a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and

f) any other evidence, including evidence submitted to the Residential Tenancy Branch with the application for dispute resolution, in accordance with Rule 2.5 [*Documents that must be submitted with an application for dispute resolution*].

In making this application, the landlord testified that he served the application for dispute resolution with a copy of the notice to end tenancy and the notice of hearing. I note that, as part of his application, he did not provide any calculation of his monetary claim. As well, he acknowledged that he had not provided photographs submitted to the residential tenancy branch to the tenant or the tenant's advocate. The tenant denied that he had received the landlord's application for dispute resolution or supporting documents in the manner described by the landlord. The tenant testified that on August 11, 2015, he found the landlord's Application for Dispute Resolution on the common room kitchen table. He testified that the landlord would often leave materials for him here. The landlord testified that approximately a week or more ago, the tenant approached him asking for copies of the dispute resolution package and that the landlord refused to provide copies. The landlord testified that the tenant said that he had lost them. The tenant stated that he asked for copies to provide to his advocate.

I accept the testimony of the tenant that he did not receive the landlord's application until August 11, 2015. I find that the tenant was consistent and clear in his testimony regarding service of the documents. I find that the landlord's testimony with respect to service of documents was inconsistent throughout the hearing. I also find that the landlord's documentary submissions and evidence were inconsistent in that the landlord's application indicated that he served the tenant with a 1 Month Notice to End Tenancy on June 10, 2015 while the 1 Month Notice was dated June 17, 2015 and his testimony at hearing was, at times, that the 1 Month Notice was served to the tenant on June 18, 2015.

I find that the landlord has failed to prove to my satisfaction that he served the tenant with his Application for Dispute Resolution and supporting materials in accordance with the service provisions of the *Act*. Given this finding, it is unnecessary to analyze the substance of the landlord's application. I will dismiss the landlord's application. However, I will briefly comment on the substance of the landlord's application.

### Background and Evidence

The landlord applied to end this tenancy for cause indicating several grounds under section 47 of the *Act* including;

**47** (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

(iii) put the landlord's property at significant risk;

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(i) has caused or is likely to cause damage to the landlord's property,

(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

(f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

(g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32

(3) [*obligations to repair and maintain*], within a reasonable time...

The landlord testified that the tenant has been residing in the rental unit as part of a verbal rental agreement since May 2013. He testified that the rental amount of \$375.00 is payable on the first of each month. He also testified that the home that serves as the residential premises has 2 rental units with a shared bath and kitchen. He testified that he wants to end this tenancy because he cannot do repairs on his heritage home without cleaning out the tenant's clutter. He made claims that the tenant does not clean up after himself and breaks other house rules. The landlord provided no corroborating evidence to support the claim that the tenant has disturbed the landlord or other occupants as a result of a failure to tidy up or any other infraction. The landlord provided no evidence that he had provided warning letters to the tenant that identified issues of non-compliance with house rules to be corrected. The landlord stated that he had brought further materials to provide for this hearing by means of evidence to support his claims.

### Analysis

I note that, if the landlord had succeeded in proving service with respect to his Application for Dispute Resolution, I would not have allowed further evidence to be considered at this late point in time. In accordance with Rule of Procedure No. 3.19, I find that the landlord did not follow the requirements of the Act in preparing evidence for this hearing with respect to any service or notice of further evidence.

#### **3.19 Submitting evidence after the hearing starts**

No additional evidence may be submitted after the dispute resolution hearing starts, except as directed by the Arbitrator.

I also note that, if the landlord had succeeded in proving service with respect to his Application for Dispute Resolution, I would not have found that the evidence he submitted to support his application to end the tenancy would have been sufficient to prove his claim on a balance of probabilities. I do not find, based on the evidence provided at this hearing that;

- the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
- the tenant seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant,
- the tenant put the landlord's property at significant risk;

- the tenant or a person permitted on the residential property by the tenant has engaged in any illegal activity
- the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;
- the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [*obligations to repair and maintain*], within a reasonable time...

### Conclusion

I dismiss the landlord's application in its entirety.

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: September 2, 2015

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Residential Tenancy Branch

