



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPE, OPC, OPB, MNR, MNDC, FF, CNC

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession as a result of the end of employment, the landlord has cause and the tenant has breached an agreement with the landlord pursuant to section 55;
- a monetary order for unpaid rent or utilities and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;

Both parties attended the hearing by conference call and gave affirmed testimony. The landlord stated that the tenant was served with the notice of hearing package and the submitted documentary evidence by Canada Post Registered Mail on January 18, 2016. The tenant confirmed receipt of the package in this manner. As such, I find that the tenant has been properly served as per sections 88 and 89 of the Act.

### Preliminary Issue

The tenant stated that she did not serve the landlord with her notice of hearing package. The landlord confirmed that no packages have been received from the tenant. I find that as the tenant has failed to properly serve the landlord with her notice of hearing

package as per sections 88 and 89 of the Act, the tenant's application for dispute is dismissed with leave to reapply. The hearing shall proceed on only the landlord's application.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession for an end to employment? For cause? For breach of an agreement with the landlord?

Is the landlord entitled to a monetary order for unpaid rent or utilities? For recovery of the filing fee?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the landlord's claim and the tenant's cross claim and my findings around each are set out below.

Both parties agreed that this tenancy began on July 1, 2015 on a month-to-month basis. The monthly rent is \$850.00 payable in advance on the last day of the preceding month and a security deposit of \$425.00 was paid.

Both parties agreed that on January 1, 2016, the landlord served the tenant with the 1 Month Notice dated January 1, 2016. The 1 Month Notice set out an effective end of tenancy date of February 1, 2016 and that it was being given as:

- the tenant has allowed an unreasonable number of occupants in the unit;
- the tenant or person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord;
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
  - put the landlord's property at significant risk; or

The landlord seeks a monetary claim of \$323.00 for the excessive electrical usage by the tenant. The landlord relies upon the submitted copy of electric billing history for the last 4 years at the rental premises. The tenant disputed the landlord's claims stating that hydro was included as part of the tenancy. The landlord disputed this claim stating that the tenancy provided for usage up to \$140.00 and that the tenant would pay anything in excess of this amount.

### Analysis

Pursuant to section 63 of the Act, an arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute over possession of the rental premises.

During this hearing, the parties reached an agreement to settle their dispute under the following final and binding terms:

1. The landlord agreed to withdraw the 1 Month Notice dated January 1, 2016.
2. Both parties agreed to mutually end the tenancy on April 30, 2016.
3. The landlord will be granted an order of possession for April 30, 2016 in recognition of this mutual agreement.
4. Both parties agreed that the tenant may provide late notice to vacate the rental premises if the tenant is able to end the tenancy earlier.

The parties agreed that these particulars comprise the full and final settlement of all aspects of their disputes for both parties.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused an excessive usage of electricity that was beyond the agreement that was made.

In this case, I find on a balance of probabilities that the landlord's monetary claim has not been established. A review of the "Tenant Rules and Regulations Agreement" does not provide any conditions of usage for electricity or payment of such. The agreement does not provide any details to support either the landlord or the tenant. The tenant has

claimed that electricity was included in the tenancy agreement. As such, the landlord has failed to provide sufficient evidence to satisfy me that an agreement was made for the allowed electrical usage of the rental premises or that an agreement was made for the tenant to pay any overages. This portion of the landlord's application is dismissed.

As a mutual agreement to end the tenancy was reached and the landlord was not successful in his monetary application, I decline to make any orders for the recovery of the filing fee.

### Conclusion

The tenant's application is dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

The landlord has withdrawn the 1 Month Notice dated January 1, 2016.

Both parties mutually agreed to end the tenancy on April 30, 2016.

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: March 01, 2016

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Residential Tenancy Branch

