



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PEACE ARCH SENIOR CITIZENS HOUSING SOCIETY  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes MNDC, OLC, RR

### Preliminary matters

At the start of the conference call the Arbitrator introduced two preliminary matters to be dealt with prior to hearing the Tenant's application.

The first preliminary matter is to discuss the Landlord's evidence package submitted on May 12, 2017. This evidence package is considered late evidence under the rules of procedure for the Residential Tenancy Branch. An Arbitrator can accept late evidence if the Arbitrator rules the evidence was received by the other party with time to review the evidence and it does not prejudice the party because of the time issue. The Landlord's evidence package was dated May 12, 2017 and the last day for the respondent to submit evidence was 7 days after the Tenant submitted the amendment to the application on May 2, 2017. The Landlord's evidence was to be submitted by May 9, 2017 to be considered on time for the hearing. The Tenant's Advocate said they received the Landlord's evidence package and have reviewed it. There was some discussion of the Tenant's letter dated May 7, 2017, but the Tenant's Advocate had no objection to admitting the Landlord's evidence package of May 12, 2017. The Arbitrator accepted the Landlord's evidence package dated May 12, 2017 into the hearing documents.

The second preliminary issue resulted from the Landlord's evidence package and the Landlord's Counsel's questioning whether the Tenant's application was previously dealt with in a Residential Tenancy Branch decision dated February 25, 2017. The Landlord's Counsel said if so then this matter is res judicata as the matter was dismissed in Residential Tenancy Branch file 855710 decision dated February 25, 2017. Consequently the Landlord's Counsel requested the Tenant's present application be dismissed on the grounds the matter has been decided.

The Tenant's Advocate responded to the Landlord's Counsel's request by saying the issue decided in the decision of February 25, 2017 did not answer the question in this application, which is whether the Landlord is responsible for the cost of heating which may include operating the electric heater in the Tenant's bathroom. The Advocate said the previous decision did not answer this question. Therefore the Tenant's new application is on a separate and unrelated issue to the last application. Further the Tenant's Advocate said the Tenant was disadvantaged in the last hearing because the Landlord had legal counsel and the Tenant did not. The Advocate said considering the amount of documentation and the Tenant's age it would not be fair to thinking the Tenant could provide a robust defence of her application. The Tenant's Advocate said that res judicata does not apply in this situation.

The Landlord's Counsel responded that the decision of February 25, 2017 on page 2 says **"Both parties were given full opportunity to present evidence and make submissions."**

**Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. All of the evidence given at the hearing was carefully considered.**" The Landlord's Counsel said the Tenant's defence that the hearing was not fair and all the evidence may not have been considered is not correct. The Landlord's Counsel said this paragraph in the decision shows that the parties had ample opportunity to present evidence and the Arbitrator carefully reviewed the evidence.

Secondly the Landlord's Counsel said on page 13 (i) the decision says: **'I dismissed the tenant's claim of \$164.84 for additional hydro costs. The tenant failed to provide evidence at the hearing that she has incurred this additional cost in her hydro bill for the electric heater in the bathroom. Further the tenancy agreement provided that the landlord provide heat. The landlord provides heat. The tenant failed to prove this claim.'** The Landlord's Counsel said the decision directly dismisses the Tenant's claim for increased hydro costs because of using the electric heater in the bathroom. The Landlord's Counsel continued to say the Tenant's present application is to recover increased hydro costs for the heater in the bathroom. This has been resolved in the decision on February 25, 2017 and therefore this matter is res judicata (a matter already judged). The Landlord's Counsel said this is not the venue for the Tenant to have this matter reviewed.

The Tenant's Advocate said that there must be fairness in a decision. The Tenant's Advocate said the Tenant did not get an answer to whether the electric heater in the bathroom is included in the heating costs the Landlord is responsible to provide. The Advocate said this was due to the Tenant not having legal counsel and that the process was overwhelming for a person of the Tenant's age. The Advocate said res judicata should not apply in this case and the Tenant's application should be heard.

The Landlord's Counsel said the Tenant's application was first scheduled for December 22, 2016 and then was adjourned to February 16, 2017 so the Tenant had ample time to seek assistance in presenting her case. As well the Tenant was the person making the application so she had opportunity to prepare her case. In addition the Landlord's Counsel said the evidence for the Tenant's application is the same as the evidence for the previous application.

The Arbitrator asked the Tenant and the Tenant's Advocate if the Tenant had made an application for review of the decision or an application for Judicial Review. The Tenant and the Tenant's Advocate said no applications for review of the decision of February 25, 2017 have been made. The Tenant said she is elderly and she did not understand this process. As well the Tenant said she was unable to find someone to assist her that was affordable.

In regard to the preliminary matter of res judicata applying to the Tenant's application dated April 13, 2017, I have carefully reviewed the evidence and testimony. In the Tenant's application under the Details of the Dispute the Tenant writes the dispute is about the high hydro costs resulting from using the bathroom electrical heater. The Tenant's application originally was to recover hydro costs of \$271.50 and compensation for hardship of \$250.00 for a total of \$521.50. The Tenant amended the application to \$361.65 representing \$111.65 in increased hydro costs and \$250.00 in compensation for hardship.

The issue of the increased hydro costs due to operating the electric heater in the Tenant's bathroom was heard in the hearing of February 22, 2017. The Arbitrator dismissed the Tenant's

request for compensation for the increased hydro costs resulting from operating the electric heater in the bathroom. The paragraph on page 13 (i) is very clear about this part of the Tenant's application. The Arbitrator says in the decision the tenant failed to provide evidence at the hearing that she incurred this additional cost in the hydro bill for the electric heater in the bathroom. Consequently as the previous Arbitrator has heard and made a decision on the matter of compensation for increased hydro costs as a result of operating an electrical heater in the Tenant's bathroom, I have no jurisdiction to change or over rule a previous Arbitrator's decision. As well the Tenant's claim for hardship for \$250.00 is a result of the increased hydro costs application; therefore I view the compensation for increased hydro costs and the hardship compensation as one application. Consequently, I have no jurisdiction to make a decision on the hardship compensation claim by the Tenant. As a result I dismiss the Tenant application due to a lack of jurisdiction. The Tenant may want to consult a legal representative for what course of action the Tenant may be able to take in regards to this matter.

### Conclusion

The Tenant's application is dismissed due lack of jurisdiction as a result of res judicata (a matter already judged).

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 17, 2017

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Residential Tenancy Branch