



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC

### Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution, filed December 29, 2016, wherein they sought monetary compensation from the Landlords. By Amendment filed January 10, 2017 the Tenants increased their monetary claim to \$25,000.00.

The hearing was conducted by teleconference on June 22, 2017. Both parties called into the hearing. The Landlords' manager, A.D., and legal counsel, A.E., called into the hearing. The Tenant, J.K. called in on her own behalf and as agent for the other Tenant.

At the outset of the hearing, counsel for the Landlord submitted that the Tenant had applied outside the two year limitation period imposed by section 60 of the *Residential Tenancy Act*. I found it necessary to address this issue before proceeding with the Tenants' monetary claims, as if they filed outside the time required by the *Act*, their claim "ceases to exist" pursuant to section 60(2) of the *Act*. Consequently, I heard only submissions and evidence on the issue of this issue.

Both parties were given a full opportunity to be heard on the limitations issue, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure* and which related to the issue before me. However, not all details of the parties' respective submissions and or arguments

are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue to be Decided

1. Have the Tenants applied for dispute resolution within the two year limitation imposed by section 60 of the *Residential Tenancy Act*?

### Background and Evidence

Counsel for the Landlords provided a letter dated June 16, 2017 in which he set out the Landlords' submissions with respect to the two year limitation imposed by the *Act*. His submissions at the hearing mirrored that letter and are summarized below.

Counsel for the Landlord provided a copy of the Arbitrators Decision dated January 2, 2015. Counsel drew my attention to page 3 of the Decision, wherein the Arbitrator recorded the following:

"...The Landlord referred to a letter provided by the Tenant in written evidence which is dated November 24, 2014 which states in part:

"As per section 45(3) of the Residential Tenancy Act, I am serving notice of the necessity to end the tenancy effective December 1, 2014 on breach of a material term..."

[Reproduced as written]

Arbitrator Kahlon continued at page four as follows:

"Although the Tenant made a number of submissions about the intention behind her written notice, I find that the content of the written notice to end the tenancy gave a clear understanding to the Landlord that the Tenant was ending the tenancy as of December 1, 2014. Furthermore, the Tenant quoted the above section of the Act, further reinforcing the instructions in her letter to end the tenancy."

Counsel then drew my attention to the Conclusion portion of the Decision which reads as follows:

"The Landlord's Application for an Order of Possession is granted which is effective two days after service on the Tenant. This order may then be filed and enforced in the Supreme Court as an order of that court."

For the above reasons, I dismiss the Landlords' and Tenant's monetary claims **with** leave to re-apply including the security deposits.

The remainder of both parties' Applications is dismissed."

Counsel submitted that the Decision of Arbitrator was that the tenancy ended December 1, 2014.

Counsel also submitted that the Tenant failed to prove exceptional circumstances warranting an extension of time pursuant to section 66(1) of the *Act*. (Notably, the Tenant failed to apply for more time pursuant to section 66(1) and therefore I declined to hear further submissions from counsel in this regard.)

Counsel submitted that as the Tenants Application was filed December 30, 2016 it is therefore outside the two year limitation imposed by section 60 of the *Residential Tenancy Act*. Counsel submits that the Tenant's Application should be dismissed having been filed outside the strict two year time limit.

The Tenant testified as follows.

She stated that the Arbitrator decided that he would only hear evidence with respect to the Landlord's request for an Order of Possession and dismissed all other claims with leave to reapply.

The Tenant stated that she was not able to present evidence with respect to the reasons she ended her tenancy which she stated was because the Landlords failed to address the mould issues.

The Tenant stated that they moved out of the rental unit on December 31, 2014.

The Tenant stated that during the hearing the Arbitrator found that the Landlords had 15 days in which to apply for retention of the Tenants' security deposit. She further stated that the Arbitrator told her that she had two years in which to reapply "once she got her documents in order".

The Tenant claimed that the Arbitrator did not make specific reference to any sections of the *Act* when he told her she had two years to reapply. She stated that she took that to mean that she had two years *from the date of the hearing in which to make her application*. She also argued that it was logical that she would have two years from that date as well since they were said at the same time.

The Tenant said that she then filed “exactly two years from the date of the hearing”.

In her testimony before me, the Tenant confirmed that she did not read or otherwise reference the *Residential Tenancy Act* when making her application and in particular did not read section 60 of the *Residential Tenancy Act*.

The Tenant further confirmed that she did not contact the Residential Tenancy Branch to speak to an information officer about her two year deadline.

### Analysis

Section 41 of the *Act* provides as follows:

#### **How a tenancy ends**

#### **44 (1) A tenancy ends only if one or more of the following applies:**

##### **(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:**

###### **(i) section 45 [*tenant's notice*];**

(i.1) section 45.1 [*tenant's notice: family violence or long-term care*];

(ii) section 46 [*landlord's notice: non-payment of rent*];

(iii) section 47 [*landlord's notice: cause*];

(iv) section 48 [*landlord's notice: end of employment*];

(v) section 49 [*landlord's notice: landlord's use of property*];

(vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];

(vii) section 50 [*tenant may end tenancy early*];

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

##### **(f) the director orders that the tenancy is ended.**

(2) [Repealed 2003-81-37.]

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and

tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

[Emphasis added in **bold**]

As provided for in the Arbitrator Decision, the tenancy ended December 1, 2014 pursuant to the Tenant's notice to end tenancy.

Section 60 of the *Act* provides as follows:

**Latest time application for dispute resolution can be made**

- 60** (1) If this Act does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned.
- (2) Despite the *Limitation Act*, if an application for dispute resolution is not made within the 2 year period, a claim arising under this Act or the tenancy agreement in relation to the tenancy ceases to exist for all purposes except as provided in subsection (3).
- (3) If an application for dispute resolution is made by a landlord or tenant within the applicable limitation period under this Act, the other party to the dispute may make an application for dispute resolution in respect of a different dispute between the same parties after the applicable limitation period but before the dispute resolution proceeding in respect of the first application is concluded.

Based on the above, and on a balance of probabilities, I find that the Tenant was required to make her application within 2 years of December 1, 2014 and therefore had until November 30, 2016 to reapply for Dispute Resolution. As she filed on December 29, 2016, her application was filed outside the two year limitation, and pursuant to section 60(2), her claim ceases to exist.

The Tenant submits that she relied on information provided by Arbitrator Kahlon at the hearing and that she interpreted his direction to mean she had two years from the date of the hearing to apply. She suggests that as the Landlord had 15 days from the date of the hearing to apply to retain the security deposit, the natural conclusion is that she also had 2 years *from the date of the hearing*.

Section 38 of the *Act* deals with security deposits and reads in part as follows:

**Return of security deposit and pet damage deposit**

- 38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
  - (b) the date the landlord receives the tenant's forwarding address in writing,
- the landlord must do one of the following:
- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
  - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38 specifically provides that a landlord has until the “later of” two possible dates; namely, the date the tenancy ends, or the date the landlord receives the tenant’s forwarding address in writing. In the hearing before the Arbitrator, he found that the Landlords did not receive a correct forwarding address from the Tenants until the date of the hearing; consequently, he informed the Landlords that the 15 days began from the date of the hearing. This finding does not extend the strict time limit imposed by section 60 as submitted by the Tenant.

The Tenant stated that she was not able to reapply until December 29, 2016 as she was busy getting all her documents in order. It is unfortunate the Tenant did use some of the time she was preparing to review the *Act*, or speak to an information officer about the strict two year deadline.

### Conclusion

The Tenants’ Application is dismissed having been filed outside the two year deadline provided for in Section 60 of the *Residential Tenancy Act*.

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: June 30, 2017

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Residential Tenancy Branch