



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **INTERIM DECISION**

Dispute Codes      CNR ERP LRE MNDC MNSD OLC PSF RP RR FF

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Applicant under the *Residential Tenancy Act* (the “Act”), seeking:

- To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”);
- To suspend or set conditions on the Respondent’s right to enter the rental unit;
- To have the Respondent make emergency repairs for health or safety reasons;
- To have repairs to the unit, site, or property completed;
- To have the Respondent provide services or facilities required by the tenancy agreement or law;
- An Order for the Respondent to comply with the *Act*, regulation, or tenancy agreement;
- A rent reduction for repairs, services, or facilities agreed upon but not provided;
- Compensation for loss or other money owed;
- The return of part or all of the security deposit or pet damage deposit; and
- The recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Applicant, the Respondent, and legal counsel for the Respondent, all of whom provided affirmed testimony and submissions. All parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

At the outset of the hearing the Applicant stated that since filing her Application, she has vacated the rental unit. As a result, the Applicant withdrew her claims to:

- Cancel a 10 Day Notice;
- Suspend or set conditions on the Respondent’s right to enter the rental unit;
- Have the Respondent make emergency repairs for health or safety reasons;
- Have repairs to the unit, site, or property completed;

- Have the Respondent provide services or facilities required by the tenancy agreement or law;
- Have the Respondent comply with the *Act*, regulation, or tenancy agreement; and
- Receive a rent reduction for repairs, services, or facilities agreed upon but not provided.

Legal counsel for the Respondent stated that the Respondent attempted to file a cross-application for a Monetary Order for unpaid rent or utilities, compensation for other money owed, and recovery of the filing fee, as well as retention of the security deposit; however, the Application was not filed in time to be crossed with this hearing and a separate hearing was scheduled for these matters. Legal counsel for the Respondent therefore requested that these matters be heard today, alongside the remaining monetary claims of the Applicant as the claims of both parties are sufficiently related to justify being heard together.

Having reviewed the Applications of both parties, I agree that the remaining claims of the Applicant are sufficiently related to justify being heard alongside those of the Respondent. I also note that the reason the Applicant received an expedited hearing, was because their Application related to a 10 Day Notice and the continuation or end of the tenancy. However, I find that the tenancy ended when the Applicant vacated the rental unit and as the Applicant has withdrawn all claims in relation to the continuation of the tenancy, the only claims remaining for the Applicant are monetary.

Although legal counsel for the Landlord requested that the Respondent's claim be heard alongside the Applicant's remaining monetary claims in this hearing, the Respondent testified that they had not yet received the Notice of Hearing in relation to their Application and that as a result, neither the Notice of Hearing nor a copy of their Application and evidence had been served on the Applicant. Section 3.1 of the Rules of Procedure outlines what documents must be served with the hearing package, including the Application, the notice of dispute resolution proceeding, the dispute resolution proceeding information package, and all other relevant evidence served on the Branch by the applicant. Section 3.5 of the Rules of Procedure states that the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that the respondent was served with the hearing package and evidence. Section 7.8 of the Rules of procedure states that at any time after the dispute resolution hearing begins, the arbitrator may adjourn the dispute resolution hearing to another time.

As a result of the foregoing, I am not satisfied that the Applicant has been duly served with the Application, the Notice of Hearing, or the evidence package in relation to the Application filed by the Respondent. Therefore I find that it would be prejudicial to the Applicant as well as a breach of the Rules of Procedure and the principles of natural justice to proceed with the Application filed by the Respondent this time. However, as I have stated above, I agree that the remaining monetary claims for the Applicant are sufficiently related to the monetary claims made by the Respondent in his Application, and as the urgent claims for which the Tenant received an expedited hearing have been withdrawn, pursuant to section 7.9 of the Rules of Procedure, I find it necessary and appropriate to adjourn this hearing. As a result, I order that the remaining monetary claims of the Applicant for compensation for loss or other money owed; the return of part or all of the security deposit or pet damage deposit; and the recovery of the filing fee be heard alongside that of the Respondent. For ease of reference I have included the file number for the Respondent's Application on the cover page of this decision.

At the close of the hearing there was some indication that the rental address which is the subject of this dispute was rented to the Applicant as a vacation rental. The parties were clearly advised that section 4(e) of the *Act* states that the *Act* does not apply to living accommodation occupied as vacation or travel accommodation. A copy of the rental or lease agreement was not before me for consideration and as the time for the hearing had elapsed and the remainder of the Applicant's claims were adjourned to be crossed with that of the Respondent, the issue of jurisdiction was not addressed in this hearing. However, the parties were ordered to submit copies of the rental or lease agreement for the consideration of the Arbitrator in the reconvened hearing.

At the close of the hearing the Respondent and legal counsel for the Respondent pointed out that the address listed for the Applicant on the Application is the dispute address which is no longer occupied by the Tenant. As the Tenant's Application was adjourned to be heard alongside the respondent's Application, the Respondent requested forwarding address for the Applicant so that she could be served with the documents and evidence in relation to that hearing. The Tenant acknowledged that she no longer resides at the address listed in her Application and stated that she has not provided the Respondent with her forwarding address. When asked to provide a forwarding address in the hearing, the Tenant refused and stated that one would be e-mailed to legal counsel for the Applicant. I advised that Tenant that if she does not provide a forwarding address to the Respondent or legal counsel for the Respondent, the Respondent can serve the Tenant documents in relation to the upcoming reconvened hearing of this matter at the address provided by her on her Application.

### Conclusion

Based on the above, I issue the following order to the Applicant, the Respondent, and legal counsel for the Respondent:

- **I order** that this hearing will be crossed with the Respondent's Application and reconvened on the date of that hearing as identified in the Notice of Hearing documents attached to this decision.
- **I order** that both parties submit to the Residential Tenancy Branch, a copy of the tenancy or rental agreement signed in relation to the dispute address for consideration in the reconvened hearing.
- **I order** that the Tenant provide her forwarding address in writing to the Landlord or legal counsel for the Landlord as soon as possible, and in any event, no later than December 31, 2017.
- **I order** that if the Tenant does not provide her forwarding address for service of documents in writing to the Landlord or legal counsel for the Landlord as outlined above, the Landlord may use the address listed for the Tenant on her Application as the Tenant's address for service and that documents sent to that address by the Landlord shall be considered sufficiently served for the purposes of the 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: December 15, 2017

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Residential Tenancy Branch