



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ERP, MNDC, OLC, RR, FF

### Introduction

This hearing convened as a result of Tenant's Application for Dispute Resolution wherein the Tenant requested the following orders:

- an Order that the Landlord:
  - comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the tenancy agreement; and,
  - make emergency repairs;
- monetary compensation from the Landlord;
- a rent reduction for the cost of repairs, services or facilities;

The hearing was conducted by teleconference on January 4, 2018 and continued on March 5, 2018.

Both parties called into the hearing on January 4, 2018. The Tenant did not call into the hearing on March 5, 2018. C.A., who identified himself as the Tenant's agent, and her "ex-boyfriend" called in on her behalf. He requested an adjournment of the hearing on behalf of the Tenant.

### Issue to be Decided

1. Should the Tenant be granted an adjournment?
2. Is the Tenant entitled to the relief sought on her Application?

### Background Evidence

C.A. stated that the Tenant had returned to her home country for a “pressing medical issue that had to be dealt with. “He was not able to provide further information in this regard, only to say that the Tenant’s mother made the appointment. When I reminded the Tenant’s agent that the hearing was by teleconference and she could have called in, he stated that he believed the appointment was at the same time as the hearing.

C.A. confirmed that to his knowledge, the Tenant did not speak to the Landlord about her request for an adjournment. Initially he was not able to state when the Tenant left Canada, and then stated it was February 22, 2018.

The Landlord testified that the Tenant met with her to pay her rent at the end of February 2018 and at that time did not indicate that she was leaving the country or would otherwise not be able to attend the continuation of this hearing.

At the hearing on January 4, 2018 I ordered that the Tenant serve her evidence on the Landlord as she had failed to do so when she applied for Dispute Resolution (on October 15, 2017) as required by the *Rules*. At the reconvened hearing on March 5, 2018 the Landlord testified that the Tenant did not provide her evidence as ordered. The Tenant’s agent did not dispute this information.

The Landlord stated that she was opposed to the Tenant’s request for an adjournment. She further stated that she had serious concerns about moving this forward as the Tenant did not contact her prior to the hearing to ascertain her position on an adjournment request and failed to provide evidence as ordered.

### Analysis

After consideration of the testimony of the parties and on a balance of probabilities, I find that the Tenant’s request for an adjournment should be denied.

The *Residential Tenancy Branch Rules of Procedure* rules relevant to the issue before me provide as follows:

#### **1.1 Objective**

The objective of the Rules of Procedure is to ensure a fair, efficient and consistent process for resolving disputes for landlords and tenants.

#### **5.2 If agreement to reschedule the dispute resolution hearing cannot be obtained**

When agreement to reschedule a hearing cannot be reached, a party or the party's agent may make a request at the hearing to adjourn the hearing under rule 7.8 [*Adjournment after the dispute resolution hearing begins*].

### **6.3 Adjournment after the dispute resolution proceeding commences**

At any time after the dispute resolution proceeding commences, the arbitrator may adjourn the dispute resolution proceeding to a later time at the request of any party or on the arbitrator's own initiative.

### **7.8 Adjournment after the dispute resolution hearing begins**

At any time after the dispute resolution hearing begins, the arbitrator may adjourn the dispute resolution hearing to another time.

A party or a party's agent may request that a hearing be adjourned.

The arbitrator will determine whether the circumstances warrant the adjournment of the hearing.

### **7.9 Criteria for granting an adjournment**

Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

Hearings before the Residential Tenancy Branch occur by telephone conference. Participants regularly call into the hearing from other provinces or countries.

The Tenant failed to submit any documentary evidence to support her claim that she was unable to attend the hearing. Further, I was not provided with any evidence as to the date she became aware she would need to leave Canada, or whether the appointment could have been rescheduled to permit her attendance at the hearing.

Had there been prior notice to the Landlord of the Tenant's request to adjourn the hearing, or some documentary evidence to support her claim that she was unable to attend due to a medical appointment, I may have granted her request for an adjournment.

However, even if the Tenant had attended the continuation of this hearing, her failure to provide the Landlord with her evidence is prejudicial to the Landlord and contrary to the principles of natural justice, and in particular the Landlord's right to know the nature of the claim against her as well as the right to respond meaningfully to relevant evidence. Further, the Tenants failure to serve her evidence on the Landlord is a breach of my Order made January 4, 2018.

The Landlord is understandably concerned about "moving this forward". As noted, the Tenant was required to provide her evidence to the Landlord when she initially applied for Dispute Resolution, yet failed to do so. She also failed to comply with my Order such that five months after filing for Dispute Resolution, and at the time of the hearing on March 5, 2018 the Landlord had yet to receive the Tenant's documentary evidence. Consequently, it is very likely that the Tenant's evidence would not have been considered, even had she called in on March 5, 2018.

I find it unlikely that an adjournment will result in resolution of this matter. The Tenant's failure to pursue her claim diligently is unduly prejudicial to the Landlord and is contrary to the *Rules of Procedure* and my Interim Order.

Having denied her request for an adjournment I must now consider the impact on her claim as a whole.

Rules 7.1 and 7.3 of the *Residential Tenancy Branch Rules of Procedure* provide as follows:

**Commencement of Hearing:**

The hearing must commence at the scheduled time unless otherwise decided by the arbitrator.

**Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The Tenant bears the burden of proving her claim on a balance of probabilities. As she failed to attend the continuation of this matter, and failed to serve her evidence in

accordance with the *Rules* and my Interim Order, I find that she has failed to prove her claim. **I therefore dismiss without leave to reapply the Tenant's Application for Dispute Resolution in its entirety.**

Conclusion

The Tenant failed to call into the reconvened hearing and her request for an adjournment is denied. The Tenant also failed to serve her evidence in accordance with the *Rules* and my Interim Order. The Tenant's claim is dismissed without leave to reapply.

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 15, 2018

---

Residential Tenancy Branch