



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MAVIS MCMULLEN HOUSING  
SOCIETY and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on January 31, 2019 (the “Application”). The Tenant applied for compensation for monetary loss or other money owed.

The Tenant appeared at the hearing. The Building Managers appeared for the Landlord. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

### Preliminary Issue – Limitation Period

The history of this matter is that the parties had a tenancy agreement in relation to rental unit #1 starting December 01, 2013. On August 22, 2015, there was a fire at the building that rendered it unlivable until January of 2017. The Tenant did not reside at rental unit #1 after August 22, 2015. She resided at a different building until January of 2017. She signed a new tenancy agreement in relation to rental unit #2 on January 24, 2017.

The Application was filed January 31, 2019. I raised the issue of the limitation period set out in section 60 of the *Residential Tenancy Act* (the “Act”). The parties made the following submissions.

Both parties agreed that the tenancy agreement in relation to rental unit #1 started December 01, 2013 and was a month-to-month tenancy.

Both parties agreed on the following. There was a fire at the rental unit building August 22, 2015. The Tenant no longer resided at rental unit #1 as of August 22, 2015. The Tenant resided at a different building all together until January of 2017.

Both parties agreed the rental unit building was damaged by the fire to such an extent that nobody could have lived in the rental unit building and the Tenant could not have lived in rental unit #1. A.Y. testified that the building was not deemed safe to occupy until January of 2017.

The Tenant says she moved back into the rental unit building January 27, 2017. T.M. says the Tenant moved back January 24, 2017.

Both parties agreed that the Tenant signed a new tenancy agreement, which was submitted as evidence. Both parties agreed that, when the Tenant moved back into the rental unit building, she moved into rental unit #2.

The Tenant said she moved into rental unit #2 because it had been renovated whereas rental unit #1 had not been renovated and she wanted to live in a renovated unit.

The parties agreed the written tenancy agreement submitted as evidence is accurate. It is between the parties and relates to rental unit #2. It does not have a start date. It is a month-to-month tenancy. Rent is \$320.00 per month. An agent for the Landlord signed the agreement January 24, 2017. The Tenant signed the agreement and indicated "24/01/60" as the date signed.

The Tenant submitted that the limitation period should be extended because the building manager at the time said her furniture was still in the rental unit building and it was not until April of 2017 that she realised her furniture was not in the building. She also said that items were missing from rental unit #1 when she accessed the unit in October of 2015.

T.M. submitted that the limitation period has passed. She submitted that the tenancy for rental unit #1 ended when the fire occurred because the Tenant moved into another building.

The Building Managers could not comment on the Tenant's position that she was told her belongings were in the rental unit building somewhere in January of 2017. A.Y. said they do not have a way to verify what the Tenant is saying in this regard.

Section 60 of the *Act* states:

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).

This matter relates to the tenancy agreement between the parties in relation to rental unit #1 as the Tenant is seeking compensation for belongings that went missing from rental unit #1 after the fire.

Section 44 of the *Act* sets out when a tenancy will end and states:

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

(e) the tenancy agreement is frustrated...

Policy Guideline 34 deals with frustration and states in part:

A contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract.

I agree with T.M. that the tenancy in relation to rental unit #1 ended on August 22, 2015, the date of the fire. In my view, the tenancy was frustrated at this point as the rental building and rental unit #1 were rendered unlivable from August 22, 2015 to January of 2017. Both parties agreed the rental unit building and rental unit #1 were unlivable due to the fire damage.

The finding that the tenancy ended August 22, 2015 is supported by the following. The Tenant never resided in rental unit #1 again. The Tenant resided in a different building altogether for approximately one and a half years. When the Tenant moved back to the

building, she signed a new tenancy agreement in relation to rental unit #2 and moved into rental unit #2. She did not return to rental unit #1.

In these circumstances, I find the tenancy in relation to rental unit #1 ended August 22, 2015. It is the end of the tenancy for rental unit #1 that is relevant under section 60 of the *Act* as the two-year limitation period starts from the end of the tenancy. Here, the Tenant had until August 22, 2017 to file the Application. The Application was filed well outside the limitation period.

Even if the tenancy in relation to rental unit #1 did not end August 22, 2015 with the fire, it certainly ended January 24, 2017 when the Tenant signed a tenancy agreement for rental unit #2. I note that there was some disagreement by the Tenant about when the tenancy agreement was signed. I find it was signed January 24, 2017 given the date of the Landlord's signature and given that the Tenant also noted the date as January 24<sup>th</sup>. The only discrepancy is that the Tenant entered 1960 as the year which is clearly incorrect.

Even if the tenancy in relation to rental unit #1 ended January 24, 2017, the Tenant still had to file the Application by January 24, 2019. The Tenant did not do so.

I do not find the Tenant's submission that she did not realise her belongings were in fact lost until April of 2017 changes the analysis. First, the Tenant submitted no evidence to support her position about this issue. Second, section 60 of the *Act* states that it is the end of the tenancy that triggers the start of the limitation period, not the date the applicant realises they have a claim under the *Act*. Here, the tenancy ended August 22, 2015 and January 24, 2017 at the very latest. These are the relevant dates. The Tenant failed to file the Application within two years of these dates. Third, there is no basis for extending the limitation period because the Tenant could have filed the Application in April of 2017 when she realised her belongings were missing as this was within two years of August 22, 2015 and of January 24, 2017. The Tenant did not explain or provide any reason for waiting until January 31, 2019 to file the Application.

I find the Tenant failed to file the Application within two years of the end of the tenancy. Pursuant to section 60 of the *Act*, the claim arising in relation to the tenancy for rental unit #1 ceases to exist for all purposes. The Application is therefore dismissed without leave to re-apply.

Conclusion

The Application was filed outside the two-year limitation period set out in section 60 of the *Act*. The claim arising in relation to the tenancy for rental unit #1 ceases to exist for all purposes and the Application is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: May 17, 2019

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Residential Tenancy Branch