



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenant: CNC, OLC, MNDCT, LRE, LAT, RR, FFT

For the landlord: OPC, MNRL-S, MNDL-S, FFL

### Introduction, Preliminary and Procedural Matters

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act ("Act").

The tenant applied for an order cancelling the landlord's One Month Notice to End Tenancy for Cause (the "Notice"), for an order requiring the landlord to comply with the Act, the Regulations, or the tenancy agreement, an order suspending or setting conditions on the landlord's right to enter the rental unit, an order allowing the tenant to change the locks to the rental unit, an order allowing a reduction in rent, for an order allowing her to assign or sublet the rental unit, and for recovery of the filing fee paid for this application.

The landlord applied for an order of possession of the rental unit due to a One Month Notice to End Tenancy for Cause (the "Notice") being issued to the tenant, a monetary order for unpaid rent and alleged damage to the rental unit, and for recovery of the filing fee paid for this application.

At the outset of the hearing, the only party present was the landlord. I affirmed the landlord into the hearing and obtained preliminary information. After six minutes, the tenant called into the teleconference hearing. She was affirmed.

The landlord claimed not to have received the tenant's application and the tenant claimed not to have received the landlord's application.

In response to my inquiry, the landlord referred to his documentary evidence showing he served his application package containing the notice of hearing by registered mail on August 15, 2019.

The tenant said she did not receive it as she will never pick-up registered mail due to a past incident when she received registered mail containing news of the death of her parents.

I found the landlord served the tenant with his application in a manner complying with section 89(1) of the Act.

The tenant said that she served the landlord her application by placing the documents on a chair outside his residence, which was on or near the residential property.

The landlord asserted he did not receive the documents, and mentioned that he was in and out of town all summer. Once upon his return, he said that he saw scattered papers around the property, and put them all in the burn pile and burned them, without reading any of the papers.

Section 89(1) allows service of the application for dispute resolution by leaving the documents with the person, the landlord in this case, by leaving the documents with a landlord's agent, or by registered mail. As the tenant said she placed the documents on a chair at or near the landlord's front door, I find she did not serve her hearing documents as required under the Act.

During the initial part of the hearing and as will be discussed in this Decision, I determined that in this case, it was not necessary to adjourn the hearing to deal with service issues.

The parties were informed that the primary issue in both their applications was cancellation or enforcement of the landlord's Notice. In other words, it was necessary to determine whether the tenancy would end or continue.

I further informed the parties that the remaining issues in both their applications were unrelated to the primary issue of disputing or enforcing the Notice. As a result, pursuant to section 2.3 of the Rules, I severed the parties' applications in order to deal only with the Notice. A determination on dismissals of the respective applications will be made at the end of this Decision.

In response to my inquiry, the tenant said without dispute that she vacated the rental unit on October 16, 2019.

As a result, I find the tenant's application concerning her request to cancel the Notice is moot as the tenancy ended on or about October 16, 2019, the date the tenant vacated the rental unit.

The parties then asked about their monetary claims, and I reaffirmed that those portions of their applications had been severed for purposes of this hearing.

I informed the tenant that her request for a return of her security deposit was premature as the landlord had 15 days after the end of the tenancy or when he received her written forwarding address to either return the security deposit or file an application claiming against it. The end of the tenancy was eight days prior to the hearing.

I informed the tenant that I declined to consider her request for \$200.00 as she failed to provide details as to how she came up with the amount and as it was listed under the portion of her application seeking a reduction in rent.

I informed the landlord that his request for compensation of \$670.00 for alleged damage to the rental unit is premature at the time of his application, as the tenancy had not yet ended. I made this determination additionally due to the landlord attempting to increase his monetary claim two weeks prior to the hearing for ongoing alleged damage and unpaid rent.

The landlord may not increase a monetary claim through evidence, but only through an amended application.

I further reiterated to the landlord that I would not deal with his request for unpaid rent as it was unrelated to the primary issue of whether the tenancy would end or continue.

I informed the parties that they could file another application dealing with their separate monetary claims. In response to the landlord's question, I informed the landlord that he may combine all monetary claims in a single application, including that for unpaid rent.

I find it important to note that the tenant said she would not be accepting the landlord's potential next application for dispute resolution by registered mail, as she does not collect registered mail. I strongly and repeatedly cautioned the tenant that if the landlord filed an application for dispute resolution and served the tenant at her forwarding address she provided in the hearing by registered mail, an arbitrator at the next hearing could deem the tenant properly served as required by the Act and proceed with the hearing.

The tenant repeatedly said she would not accept registered mail and additionally said she did not want the landlord to serve her personally as she never wanted to see him again.

### Conclusion

#### *Tenant's application-*

I dismiss without leave to reapply the portion of the tenant's application seeking cancellation of the Notice, as the tenancy ended prior to the hearing.

I dismiss without leave to reapply the tenant's request for an order requiring the landlord to comply with the Act, for a reduction in monthly rent, for an order suspending or setting conditions on the landlord's right to enter the rental unit, for an order allowing the tenant to change the locks to the rental unit, and for an order allowing her to assign or sublet the rental unit, as these issues in this circumstance involves an ongoing tenancy.

I dismiss with leave to reapply any monetary claim of the tenant.

*Landlord's application-*

I dismiss without leave to reapply the portion of the landlord's application seeking an order of possession of the rental unit per the Notice issued to the tenant due to alleged cause, as the tenancy has ended.

I dismiss with leave to reapply the portion of the landlord's application containing his monetary claim, as it was unrelated to the primary issue of enforcing the Notice.

*Both applications-*

I do not grant either party recovery of the cost of the filing fee as I have either declined to hear or dismiss portions of each application, either with or without leave to reapply, as noted above.

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: October 25, 2019

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Residential Tenancy Branch