



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      RPP, MNDCT, FFT

### Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act"). The tenant applied for an order requiring the landlord to return the tenant's personal property, a monetary order for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation and for recovery of the filing fee paid for this application.

The tenant and landlord, attended, they were affirmed into the hearing and initial testimony began.

I have reviewed all oral, photographic, and documentary evidence before me; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Issue(s) to be Decided

Has the tenant's application been filed within the required time limit under the Act?

If so, is the tenant entitled to monetary compensation, an order requiring the landlord to return her personal property, and recovery of her filing fee?

### Background and Evidence

The written tenancy agreement shows that this tenancy began on May 15, 2016.

The tenant said that she vacated the rental unit on August 31, 2017.

In response to my inquiry, the tenant also confirmed that the records at the Residential Tenancy Branch ("RTB") that she submitted and filed this application for dispute resolution on August 31, 2019, at 9:09 p.m.

The landlord did not dispute the end of tenancy date.

The landlord's oral and written evidence shows that he still had the personal property the tenant left in the rental unit, in storage.

### Analysis

Section 44 of the Act provides for how a tenancy ends, more particularly for consideration in this case, the tenancy ends when a tenant vacates the rental unit.

In the case before me, I find the undisputed evidence provided by the applicant/tenant and confirmed by the landlord is that this tenancy ended on August 31, 2017, when the tenant vacated the rental unit.

Under section 60 of the Act, an application for dispute resolution *must* be made **within 2** years of the date that the tenancy to which the matter relates ends. What this means, is that the latest either party here could file an application for dispute resolution relating to this tenancy was *August 30, 2019*. (emphasis added)

I find this requirement is distinguished from a general limitation period under the *Limitation Act*, which states in relevant part that "...a claim must not be commenced more than 2 years **after** the day on which the claim is discovered". (emphasis added)

As I explained to the tenant in the hearing, **within 2** years in this case, can be explained as follows: the first year on a calendar year basis would run from August 31, 2017, when the tenant vacated the rental unit, until August 30, 2018. The second year would then start on August 31, 2018, and run until August 30, 2019.

I further explained to the parties to think of a calendar year as January 1 through December 31.

Therefore, I find that the "**within 2** years of the date that the tenancy to which the matter relates ends" provision of section 60(1) of the Act requires that the application in this case be filed no later than August 30, 2019, as the start date commenced on the date of

the tenancy ending August 31, 2017. I find a common meaning of the word “within” is “before the end of”.

I find it important to note that other sections of the Residential Tenancy Act use the word “**after**” in calculating timelines, such as providing that a tenant may dispute a notice to end a tenancy within a designated number of days **after** receipt of a notice.

For the reasons above, I find the tenant’s application filed on August 31, 2019, was outside the statutory time limit and is barred from being heard.

I therefore dismiss the tenant’s application, without leave to reapply.

It must be noted that during the hearing, I facilitated a discussion between the parties in an attempt to make arrangements for the tenant to collect her personal property from the landlord. The landlord readily agreed to make the tenant’s personal property available, but the discussion was ultimately unsuccessful.

I therefore find it useful to inform the parties of Residential Tenancy Regulations (“Regulations”), in particular section 25, on ways a landlord may dispose of a tenant’s personal property, and/or claim for storage costs from the tenant. The parties are encouraged to consult with an information officer with the RTB should they have any questions.

### Conclusion

The tenant’s application is dismissed, without leave to reapply, as it was filed outside the statutory time limit.

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: November 1, 2019

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Residential Tenancy Branch