



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MORE THAN A ROOF MENONITE HOUSING  
SOCIETY and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OLC, FFT

### Introduction

On December 16, 2019, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for the Landlord to comply with the Act, Regulation, or tenancy agreement.

The matter was scheduled as a teleconference hearing. The Landlord and Tenant attended the hearing. The Tenant was assisted by legal counsel. The hearing process was explained, and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The Tenant and his counsel raised the issue that the Landlord served his documentary evidence late. The Tenant testified that the Landlord's evidence was received on February 18, 2020; two days prior to the hearing. The Tenant's counsel submitted that the Landlord's documentary evidence should not be considered.

The Landlord responded by testifying that he attempted to provide his documentary evidence to the Residential Tenancy Branch one week prior to the hearing but receipt of the evidence was delayed due to a system issue.

Residential Tenancy Branch Rules of Procedure require a respondent to an application provide any documentary evidence to the applicant and the Residential Tenancy Branch not less than seven days prior to the hearing.

While I accept the Landlord's testimony that he is not to blame for the delay in providing the documentary evidence to the Residential Tenancy Branch, I find that it is not an excuse for failing to serve the documentary evidence to the Tenant within seven days of the hearing. I find that the Landlord's evidence was served late. I find that the Tenant and his counsel have not had a full opportunity to consider and respond to the Landlord's evidence. For this reason, the Landlord's documentary evidence was not accepted or considered.

#### Issues to be Decided

- Is the Tenant entitled to an order for the Landlord to comply with the Act, Regulation, or tenancy agreement?

#### Background

The Landlord and Tenants both testified that the tenancy began on February 1, 2016, as a six-month fixed term tenancy that continued thereafter on a month to month basis. Rent in the amount of \$1,324.00 is to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit in the amount of \$630.00.

The parties testified that a co-tenant gave notice and moved out of the rental unit. The Landlord has treated the tenancy as having ended based on receipt of a notice to end tenancy that the Landlord received from a co-tenant.

The Tenant and his counsel made submissions that the co-tenant, Ms. SW did not end her tenancy by providing the Landlord with a proper notice to end tenancy. The Tenant testified that the Landlord did not provide sufficient proof to show that the tenancy has ended, and therefore the Landlord cannot treat his tenancy as having ended.

In addition, the Tenant and his counsel submitted that acceptance of rent by the Landlord in January 2020, and February 2020, has created a new tenancy agreement.

The Tenant is seeking an order for the Landlord to comply with the Act, or tenancy agreement that the tenancy continues.

In reply, the Landlord testified that the Landlord received a proper notice to end tenancy from Ms. SW. The Landlord testified that the notice was signed and dated by Ms. SW. The Landlord testified that a copy of the notice to end tenancy was not provided to the Tenant or the Residential Tenancy Branch due to confidentiality issues.

With respect to the issue regarding acceptance of rent and entering into a new tenancy agreement, the Landlord testified that acceptance of rent was for occupancy only. The Landlord testified that their communication to the Tenant was very clear that they have no intention to enter into a tenancy agreement with him.

The Tenants evidence contains letters received from the Landlord on January 3, 2020 and February 6, 2020 that indicate rent was accepted for occupancy use.

Within the Tenant's documentary evidence is an excerpt taken from an affidavit of Ms. MS.

*"...More than a Roof would not consider me for my present unit in Burnaby if I remained on the tenancy in the Charleswood unit. As a result, on October 23, 2019, I ended the tenancy at the Charles Street apartment, and set the end date as December 31, 2019. Mr. Berg wrote to me and the respondent to advise that the tenancy would not be renewed for either party...."*

### Analysis

Section 44 of the Act provides that a tenancy ends only if the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

- (i) section 45 [tenant's notice];*
- (i.1) section 45.1 [tenant's notice: family violence or long-term care];*
- (ii) section 46 [landlord's notice: non-payment of rent];*
- (iii) section 47 [landlord's notice: cause];*
- (iv) section 48 [landlord's notice: end of employment];*
- (v) section 49 [landlord's notice: landlord's use of property];*
- (vi) section 49.1 [landlord's notice: tenant ceases to qualify];*
- (vii) section 50 [tenant may end tenancy early];*
- (b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;*
- (c) the landlord and tenant agree in writing to end the tenancy;*
- (d) the tenant vacates or abandons the rental unit;*
- (e) the tenancy agreement is frustrated;*

- (f) the director orders that the tenancy is ended;*
- (g) the tenancy agreement is a sublease agreement.*

Section 47 of the *Act* states that a notice to end tenancy must comply with section 52 of the *Act* *[form and content of notice to end tenancy]*.

Section 52 of the *Act* states that in order to be effective, a notice to end a tenancy must be in writing and must:

- (a) be signed and dated by the landlord or tenant giving the notice,*
- (b) give the address of the rental unit,*
- (c) state the effective date of the notice,*
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy, and*
- (e) when given by a landlord, be in the approved form.*

Policy Guideline # 13 Rights and Responsibilities of Co-tenants provides the following information:

*“Where co-tenants have entered into a periodic tenancy, and one tenant moves out, that tenant may be held responsible for any debt or damages relating to the tenancy until the tenancy agreement has been legally ended. If the tenant who moves out gives proper notice to end the tenancy the tenancy agreement will end on the effective date of that notice, and all tenants must move out, even where the notice has not been signed by all tenants. If any of the tenants remain in the premises and continue to pay rent after the date the notice took effect, the parties may be found to have entered into a new tenancy agreement. The tenant who moved out is not responsible for carrying out this new agreement.”*

Based on the above, the testimony and evidence of the parties, and on a balance of probabilities, I find as follows:

With respect to the Landlord's acceptance of rent in January 2020 and February 2020, I find that the acceptance of rent does not establish a new tenancy. I find that there was no ambiguity on the Landlord's intentions to treat the tenancy as ended. The Tenant applied for dispute resolution on December 16, 2019 and the Landlord was accepting rent until the matter could be resolved.

I find that there is insufficient evidence from the Landlord to prove that the tenancy was ended in accordance with the *Act*.

While the excerpt from the co-tenant indicates she ended the tenancy, there is insufficient evidence to establish that any notice to end tenancy complied with section 52 of the Act.

I note that even if the Landlord's documentary evidence had been accepted, the Landlord testified that he did not provide a copy of the notice to end tenancy.

I am assisted by the policy guideline that provides:

*If the tenant who moves out gives proper notice to end the tenancy the tenancy agreement will end on the effective date of that notice, and all tenants must move out, even where the notice has not been signed by all tenants.*

I find that the tenancy of the Tenant only ends if a co-tenant gives a proper notice to end tenancy.

I find that there is insufficient evidence from the Landlord to prove that the tenancy was ended in accordance with the Act. The Landlord did not provide proof that the co-tenant ended the tenancy by serving a proper notice to end tenancy that complies with section 52 of the Act.

I find that the original tenancy continues until ended in accordance with the Act.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution. I authorize the Tenant to deduct the amount of \$100.00 from one (1) future rent payment.

### Conclusion

There is insufficient evidence from the Landlord to establish that the co-tenant ended the tenancy by providing a proper notice to end the tenancy.

The tenancy continues until ended in accordance with 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: February 20, 2020

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Residential Tenancy Branch