



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      RP, PSF, RR, FFT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an Order for regular repairs, pursuant to section 32;
- an Order to provide services or facilities required by the tenancy agreement or law, pursuant to section 65;
- an Order to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Landlord D.B. and the tenant's criminal counsel attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant's criminal counsel submitted that she did not have authority to speak on behalf of the tenant on this matter, but that the tenant asked her to inform the Residential Tenancy Branch that he is currently incarcerated and unable to attend this hearing at this time.

Landlord D.B. testified that she received a copy of the tenant's application for dispute resolution in her mailbox on March 3, 2020. The tenant's criminal counsel was not able to answer any questions regarding service of the tenant's application for dispute resolution.

The tenant's criminal counsel submitted that the tenant is seeking an adjournment. The tenant's criminal counsel submitted that the tenant will likely be incarcerated for the next six months but that she did not know for sure.

Rule 7.8 of the Residential Tenancy Branch Rules of Procedure states that either the applicant or the respondent or their agent may request at the hearing that it be adjourned.

Rule 7.9 of the Residential Tenancy Branch Rules of Procedure (Criteria for granting an adjournment) establishes the criteria the director will consider when determining a request for an adjournment. Considerations for a request to adjourn include:

- 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.

I find that the need for this adjournment arises out of the tenant's incarceration which, on a balance of probabilities, arises out of the tenant's actions. I find that an adjournment of six or more months, is considerably longer than normal adjournments and that such an extended adjournment would prejudice the landlords. I find that an adjournment is not required to provide a fair opportunity for the tenant to be heard because, as per my finding below, the tenant can file a new application. I therefore decline to adjourn this hearing.

Rule 7.1 of the Residential Tenancy Branch Rules of Procedure provides that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 states that 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.

While the tenant's criminal counsel attended at the hearing, she submitted that she is not the tenant's counsel for this matter and only attended at the hearing to pass on the tenant's request for an adjournment. I find that the tenant did not attend and did not have an agent with authority to act on his behalf attend. Therefore, pursuant to Rule 7 of the Residential Tenancy Branch Rules of Procedure, I dismiss the tenant's application with leave to reapply.

Conclusion

I dismiss the tenant's application to recover the \$100.00 filing fee without leave to reapply.

The remainder of the tenant's application is dismissed with 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 31, 2020

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Residential Tenancy Branch