



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** *MNDCT, AAT, MNRT, RR, PSF, LRE, LAT, OLC*

### **Introduction**

- This hearing dealt with the tenant's application pursuant to the Residential Tenancy Act (the Act) for:
- a monetary order for compensation for loss or money owed under the Act, regulation or tenancy agreement pursuant to section 67;
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlords to provide services or facilities required by law pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order to allow the tenant to change the locks to the rental unit pursuant to section 70; and
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The parties represented themselves.

As both parties were in attendance, I confirmed service of documents. The landlord confirmed receipt of the tenant's evidence and agreed that he had not served his evidence on the tenant in a timely manner. Therefore, the landlord's evidence was not used in the making of this decision. I find that the landlord was served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

The tenant made an identical application on May 12, 2020 and a hearing was scheduled for June 12, 2020. The tenant did not attend the hearing while the landlord attended the hearing by conference call. In a decision dated June 12, 2020, the Arbitrator dismissed the tenant's application without leave to reapply. The tenant did not make application for a review consideration.

Based on the documentary evidence and testimony of the parties, I find that the issues in dispute today were previously scheduled to be heard on June 12, 2020. I further find that a decision was rendered on that day. Therefore, I find that the matters regarding the tenant's application for the various remedies that she has applied for and are scheduled to be heard today (July 09, 2020) have already been dealt with in the decision dated June 12, 2020.

Black's Law Dictionary defines *res judicata*, in part as follows:

Rule that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action.

Following from the above, I must dismiss the tenants' application.

The tenant may refer to Residential Tenancy Policy Guideline #24, which speaks to "Grounds for Review of an Arbitrator's Decision."

Even though I find that most of the tenant's application is *res judicata*, there is one aspect of the tenant's application that is not. On June 25, 2020, the tenant amended her application to include a monetary claim for the cost of moving and a hotel stay. I find that this portion of her application was not included in the previous application. Accordingly, this hearing only dealt with the tenant's claim for the cost of moving and hotel stay.

### **Issues to be decided**

Did the landlord serve the tenant with a valid notice to end tenancy? Was the tenant wrongfully evicted? Is the tenant entitled to her monetary claim?

### **Background and Evidence**

The tenancy started on May 06, 2020. The rental unit consists of a one-bedroom suite in a building that houses a total of 5 units. The landlord occupies a neighbouring unit. The monthly rent is \$1,800.00 payable in the middle of the month.

The landlord stated that on June 17, 2020, as he was passing by the rental unit, he smelt smoke coming from the unit. He called the fire department and the police. The tenant was not home. The firemen entered the unit and put out the fire. The landlord stated that the smoke was coming from a cushion placed on a heater. The landlord filed a photograph of the burnt cushion.

The landlord stated that on June 17, 2020 the tenant had indicated that she wanted to end the tenancy and sent the landlord a mutual end to tenancy agreement form. The tenant returned to the unit on June 19, 2020 and found a note on the door. The note informed the tenant of the fire and asked her to move out.

The landlord stated that shortly after the tenant returned, she packed her belongings and left. The tenant agreed that she was not served with a notice to end tenancy.

### **Analysis**

Section 52 of the *Residential Tenancy Act* addresses Notices to end tenancy as follows:

#### **Form and content of notice to end tenancy**

**52** 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.

In this case, the tenant agreed that she did not receive a formal notice to end tenancy but received a handwritten note from the landlord instructing her to move out.

A handwritten notice does not comply with section 52 if it is not on the approved form. Therefore, I find that this handwritten notice was not valid, and the tenancy did not have to end pursuant to this notice. The tenant also had the option of filing an application for dispute resolution at the time she was served with the notice, to determine the validity of the notice.

Since I have determined that the tenant was not served with a notice to end tenancy that complied with section 52, I find that the tenant did not have to move out and therefore is not entitled to her claim for the cost of moving and hotel stay.

**Conclusion**

The tenant's application is dismissed without 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: July 16, 2020

---

Residential Tenancy Branch