



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **OLC, CNR-MT**

### Introduction

This hearing dealt with an application under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“Ten Day Notice”) pursuant to section 46;
- An order requiring the landlord to comply with the Act pursuant to section 62;
- A request for more time to cancel the Notice to End Tenancy pursuant to section 66;

The parties attended and were given a full opportunity to be heard, to present affirmed testimony, make submissions, and call witnesses. I explained the hearing process and provided the parties with an opportunity to ask questions. The Applicant obtained an Order of Substituted Service on July 22, 2020 allowing the Applicant to serve the initiating documents by email. The parties did not raise any issues regarding the service of evidence. I have only considered and referenced in the Decision relevant evidence submitted in compliance with the Rules of Procedure to which I was referred.

This is the third hearing with respect to this tenancy. The Applicant has unsuccessfully applied twice for Review and their third Review has been filed. Reference to the file numbers appear on the first page.

### *Preliminary Issue*

Fifteen minutes after the start of the hearing, the Applicant requested an adjournment explaining that they had a disability which hindered the ability to proceed. After discussion, the Applicant then indicated they wanted to continue with the hearing and the landlord also wanted to continue.

Nevertheless, I considered the Applicant's application after taking into account the criteria established in Rule 7.9 of the RTB *Rules*, which includes the following provisions:

*Without restricting the authority of the arbitrator to consider the other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:*

- *the oral or written submissions of the parties;*
- *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: and*
- *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
- *the possible prejudice to each party.*

I found the Applicant was articulate during the hearing, able to comprehend the possible outcomes, and mindful of his obligation as an Applicant. I noted that the tenant submitted substantial well-organized materials, obtained an order of substituted service, attended a previous hearing, and applied for three Reviews, two of which have resulted in Decisions rejecting the application for the Review.

I concluded that it was not prejudicial to the Applicant to proceed with the matter and that resolution was unlikely if an adjournment were granted. I found that it would be prejudicial to the landlord to adjourn as he wanted to enforce the Order of Possession previously granted and was ready to proceed with the hearing. Accordingly, an adjournment was not granted, and the hearing proceeded.

### *Preliminary Issue # 2*

At the outset of the hearing, the landlord objected testifying that the Applicant is not a tenant and has no standing to apply under the Act. In a previous Decision (referenced) dated May 15, 2020, an Arbitrator found the RTB had no jurisdiction to hear the Applicant's application as no tenancy existed between the Applicant and the landlord. Reference to the file number appears on the first page. A copy of the Decision was submitted as evidence. The Applicant filed for a Review Hearing which was denied.

The landlord also testified that he had already been granted an Order of Possession dated June 22, 2020 in a hearing previously determined by an arbitrator which was still

of full force and affect. A copy of the Decision and Order of Possession were submitted as evidence.

The Applicant had also applied for a review of the Decision of June 22, 2010 which was dismissed as the Applicant had previously been found not to be a tenant under the Act and the Applicant was not a party to the June 22, 2020 Application.

As the Applicant has previously been found not to be a tenant in this dispute, I find I have no jurisdiction to hear this matter.

The tenant's application is dismissed as I do not have the jurisdiction to consider a matter that has already been the subject of a final and binding decision under the Act and involves an Applicant who has been found not to be a tenant.

### 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 27, 2020

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Residential Tenancy Branch