



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, CNR, OLC, MNDCT, FFT

### Introduction

This hearing dealt with two tenant applications pursuant to the *Residential Tenancy Act* (the *Act*). The first application claimed the following:

- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Tenant R.V. is the only tenant listed on the first application for dispute resolution.

The second application claimed the following:

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Tenant M.L. and tenant R.V. are listed as tenants on the second application for dispute resolution.

The landlord and tenant R.V. (the “tenant”) 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 was represented by counsel.

Both parties agree that the tenant did not serve the landlord with the Notice of hearing documents for the above applications but did serve the landlord with the evidence for the above applications. The landlord testified that he received the notice of hearing documents from the Residential Tenancy Branch when he called in to enquire about obtaining an Order of Possession. The landlord testified that he was willing to proceed with the tenant's applications. I find that the landlord was sufficiently served for the purposes of this *Act*, pursuant to section 71 of the *Act*.

Both parties agree that the landlord did not serve his evidence on the tenant. Both parties agreed that the tenant has not provided the landlord with a forwarding address. In the hearing counsel for the tenant stated that she would accept service on behalf of the tenant. Counsel provided the landlord with her address for service during the hearing.

Section 3.15 of the Residential Tenancy Branch Rules of Procedure (the "Rules") states that the Respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. As the landlord's evidence was not served on the tenant, I exclude it from consideration. The landlord's testimony provided in this hearing will be considered.

### Amendment Request

Counsel for the tenant sought to increase the tenant's monetary claim for damage and compensation under section 67 of the *Act*. Counsel sought to add damages for loss of wages, the difference between rent paid at the subject rental property and the tenant's new accommodations, loss of quiet enjoyment, and the cost of replacing the locks at the subject rental property.

The original application for dispute resolution sought a finding that the tenant did not owe rent for December 15, 2020 to January 14, 2021 and that the landlord owes the tenant one month's rent, in the amount of \$2,250.00 and \$600.00 for moving charges.

Section 64(3)(c) of the *Act* states that subject to the rules of procedure established under section 9 (3) [director's powers and duties], the director may amend an application for dispute resolution or permit an application for dispute resolution to be amended.

Section 4.2 of the Rules states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

I find that amendment sought by the tenant could not reasonably have been anticipated by the landlord as the claims are significantly different than those contained in the original application for dispute resolution. I therefore decline to amend the tenant's application for dispute resolution.

#### Claims No Longer Relevant

Both parties agree that this tenancy has ended. The issues raised in the first application are no longer applicable as the tenancy has ended. The first application is therefore dismissed without leave to reapply.

The following claims from the second application are dismissed without leave to reapply as they are no longer relevant:

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46; and
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62.

As the second application for dispute resolution is the only application being heard today, both tenants appear on the style of cause.

#### Issues to be Decided

1. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on September 15, 2020 and ended on January 14, 2021. This was originally a fixed term tenancy set to end on September 14, 2021. Monthly rent in the amount of \$2,250.00 was payable on the 15<sup>th</sup> day of each month. A security deposit of \$1,125.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree to the following facts. The subject rental property was listed for sale after the tenants moved in. The landlord informed the tenant that the locks were changed before the tenant moved in. The tenant requested new locks and the landlord gave the tenant authorization to change the locks. The tenant changed the locks and did not immediately give the landlord a copy of the keys. The landlord gave the tenant a written request for a copy of the keys on or around October 27, 2020.

Counsel for the tenant submitted that the tenant made a copy of the keys for the landlord, but the landlord never came by to pick them up. The landlord testified that the tenant did not give him a copy of the keys and so the landlord served the tenant with a One Month Notice to End Tenancy for Cause. The One Month Notice was entered into evidence and has an effective date of February 15, 2021.

Counsel for the tenant submitted that the tenant and the landlord entered into a verbal agreement that the tenant would move out of the subject rental property before the end of the fixed term lease and the landlord would give the tenant two free months' rent and moving expenses. The landlord testified that he offered the tenant two free months' rent if the tenant agreed to move out of the subject rental property early; however, the tenant said he would only move out early if the landlord gave him four months free rent. The landlord testified that since they could not agree on compensation for ending the tenancy early, he told the tenant the tenancy would continue according to the tenancy agreement.

The landlord testified that on December 16, 2020 he received a text message from the tenant which stated that the tenant was moving out on January 14, 2021 and that the

tenant would not pay rent for December 15, 2020 to January 14, 2021. This was not disputed by the tenant. The landlord testified that he then served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent.

The tenant entered into evidence the following text messages referencing the alleged agreement between the parties concerning ending the tenancy and compensation:

Text message dated October 27, 2020:

- Tenant: Hello [landlord]. We will not be home today until after 4 p.m. You are causing arguments with [tenant's partner] and I. First you tell me the house is not on the market anymore. Now it is. You said also you let us stay 2 months rent free. Then you say we get a \$250 reduction in rent until April 1st. Yesterday you said

(the remainder of the above text was cut off and was not entered into evidence)

- Landlord: There are no more showing so let's get that clear. The bank is coming this morning at 1030 so someone has to open the door for them.

The tenant entered into evidence an undated text from the landlord which states:

- Landlord: And you can stay put and pay the full rent Tenancy will not be extended

The tenant entered into evidence an undated text message from the tenant to the landlord which states:

- Hello [landlord]. Your calls to us remain unanswered because we like to remain in peace without your constant calls to us. We signed a contract and a contract is exactly what it is. [The tenant's partner] and I discussed this endepth [sic] last night. We will stay until the end of the lease. If you have any problems with that se....

(the remainder of the text message was not provided)

The tenant's application for dispute resolution seeks a finding that the tenant does not owe rent from December 15, 2020 to January 14, 2021 and that the landlord owes the tenant one months' rent in the amount of \$2,250.00 plus \$600.00 in moving expenses.

Both parties agree that a Two Month's Notice to End Tenancy for Landlord's Use of Property was not served on the tenant.

## Analysis

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

I find that the text messages entered into evidence show that the parties discussed compensation for ending the tenancy early but do not prove that the parties arrived at an agreement. I find that the tenant has not proved, on a balance of probabilities, that the parties entered into a verbal agreement to end the tenancy early in exchange for two months' rent and moving costs. Pursuant to my above findings, I dismiss the tenant's claim without leave to reapply as the tenant has not met the burden of proof.

As both of the tenant's applications were dismissed without leave to reapply, I find that the tenant is not entitled to recover the filing fee for either application, in accordance with section 72 of the *Act*.

## Conclusion

The tenant's applications for dispute resolution are 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: February 09, 2021

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Residential Tenancy Branch