



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Vogue Hotel  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, OLC, MNDCT, AAT

### Introduction

The tenant filed an Application for Dispute Resolution (the “Application”) on February 3, 2021 seeking an order to cancel the ‘10 Day Notice to End Tenancy for Unpaid Rent or Utilities’ (the “10 Day Notice”). Additionally, they applied to have the landlord comply with the legislation and/or the tenancy agreement, an allowance for their guests’ access, and monetary compensation for monetary loss. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on May 4, 2021.

The tenant attended the hearing, and I provided them with the opportunity to present oral testimony and make submissions during the hearing. The landlord did not attend the telephone conference call hearing.

To proceed with this hearing, I must be satisfied that the tenant made reasonable attempts to serve the landlord with the Notice of Dispute Resolution (the “Notice”) for this hearing. This means the tenant must provide proof that they served the document by a method allowed under s. 89 of the *Act*, and I must accept that evidence.

At the outset of the hearing the tenant described how they attended the landlord’s place of business. This place of business is the same address as that of the rental unit. They presented that they attended with a friend and that friend personally handed the Notice to the building manager. They also described how, after this transaction, the building manager visited to the tenant with the document in hand, to discuss a possible approach to resolving the matter.

I accept this evidence from the tenant that the landlord visited to discuss the hearing matter. I find the landlord received the document in line with s. 89(1)(a), where the

tenant left a copy with the property manager. I accept the tenant served the landlord the Notice; the hearing thus proceeded in the landlord's absence.

### Preliminary Matter

The tenant advised they ended the tenancy with advance notice to the landlord and moved out in mid-February. This means the tenancy already ended. By the *Residential Tenancy Branch Rules of Procedure* 6.2, I do not consider the 10-Day Notice, the allowance for guest access, or the landlord's compliance with the law. These are matters properly concerning an ongoing tenancy. By Rule 2.3, I find these issues are not relevant and not needing resolution, and I amend the tenant's Application to exclude these matters. I advised the tenant of this in the hearing and the hearing continued on the primary issue of monetary compensation.

### Issue to be Decided

Is the tenant entitled to compensation for monetary loss or other money owed, pursuant to s. 67 of the *Act*?

### Background and Evidence

The tenant presented that they lived in the unit for "about 3 or 4 years" prior to the end of tenancy in February 2021. There was "no paperwork" and thus there was no tenancy agreement in place, aside from a verbal agreement. They paid a rent amount of \$467 each month. This rent amount would come directly from the Ministry to the landlord.

The tenant explained how the landlord restricted guest access because of a serious public health measure that arose in late 2019-early 2020. This meant "visitors were blocked". The entrance to the property uses a security door for which staff must allow entrance in addition to a second secure access for the upper floor on which the tenant lived. This meant access for a guest was absolutely blocked, even when they appeared with a tenant at the entrance or when a tenant came to the entrance to accept that visitor's entry.

The tenant presented that the landlord stated this situation required extra money for another tenant to enter. With the tenant's guest here living in another city, the guest

would only attend approximately 5 days per month only. This left the tenant, or their guest, paying \$450 per month. The landlord stated to the tenant this meant their guest “can come and go as [they] please” by this method, which would evade the public health authority directive regarding guests within a single household in line with social restrictions. The tenant “asked for receipts all the time”, but once the landlord served the 10-Day Notice, they issued no more receipts for this.

As stated by the tenant on their Application: “I shouldn’t have to pay a guest fee to have a guest over.” The tenant stated the landlord initially proposed this was rent; however, they objected to this by stating “I don’t want anyone living with me.” Given the few days per month the guest would visit, this would not be another tenant in the unit; however, the tenant was facing eviction if they did not pay this amount to the landlord. When they stated they would not pay, the landlord gave the 10-Day Notice.

The tenant submitted receipts with their Application. These show:

- \$290 paid by the tenant on February 1, 2021
- \$160 paid by the tenant on “06-12-2021” for “January rent”
- \$450 paid by the tenant’s guest on November 1, 2020, for “November rent”
- \$450 paid by the tenant’s guest on October 1, 2020
- \$450 paid by the tenant on November 28, 2020

The tenant reiterated that this money is in addition to the money from the Ministry for their own rent, paid directly to the landlord.

### Analysis

The *Residential Tenancy Regulation Schedule* s. 9 sets the restrictions on occupants and guests. This provides:

- (1) The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit.
- (2) The landlord must not impose restrictions and must not require or accept any extra charge for daytime visits or overnight accommodation of guests.

The testimony and evidence of the tenant here is undisputed by the landlord, who did not attend the hearing or provide documentary evidence. From the receipts presented, as well as the detailed description of the situation, I find the landlord accepted additional

payment from the tenant for visits of a guest. Though the rationale appears to be public health measures, there is no testimony from the landlord to verify this, and no documentation is in the evidence showing that this is an authorized directive legally undertaken by the landlord here.

The tenant has presented evidence to show the exact amount paid. This reflects the amount of \$1,800 they applied for, accurately shown with exact copies of receipts they provided with their Application.

Because of this uncontradicted evidence, I grant the tenant \$1,800 as reimbursement of their claimed amount. I issue a monetary order to the tenant for this amount.

### Conclusion

Pursuant to s. 67 of the *Act*, I grant the tenant a Monetary Order for the recovery of the money they paid to the landlord previously, for \$1,800. I provide the tenant this Monetary Order and they must serve the landlord with this Order as soon as possible. Should the landlord fail to comply with this Order, the tenant may file it in the Small Claims Division of the Provincial Court where it will be enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: May 10, 2021

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Residential Tenancy Branch