



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC MNR FF

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on November 18, 2021. The Landlord applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

The Landlord attended the hearing. However, the Tenant did not. The Landlord provided a signed RTB-51 document showing the Tenant authorized the Landlord to use email as a means for service under the Act. The Landlord stated she sent the Notice of Hearing to the Tenant on May 28, 2021. I find the Tenant is deemed served with this package 3 days after it was sent, on May 31, 2021. The Landlord also sent separate packages by email to the Tenant's email address, leading up to the hearing. I find these evidence packages were sufficiently served to the Tenant, as they were sent to the Tenant's email address she agreed to, for service, and this was done in accordance with the timelines under the Act and the Rules of Procedure. I find the Landlord sufficiently served the Tenant with all documentation and evidence for the purposes of this proceeding.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters

I note that the Landlord and the Tenant, named on this application, had a previous dispute resolution proceeding in December 2018. More specifically, the Landlord applied for dispute resolution seeking monetary compensation and to claim against the Tenant's security deposit. The Tenant also cross-applied for monetary compensation and to claim against the security deposit. These matters were set to be heard together, at the hearing on December 19, 2018. On December 24, 2018, a final decision was issued, dismissing both applications, with leave to reapply. During the hearing on December 19, 2018, the parties explained that there was a concurrent Court proceeding at the Small Claims Court.

The arbitrator at the hearing on December 19, 2018, determined that there was substantial overlap between the cross application, and the separate Small Claims Court proceeding. Since the Small Claims Court matters had already been initiated, it was determined that the best course of action was to dismiss both of the December 19, 2018, RTB applications, with leave, in order to allow the Small Claims Court proceeding to be resolved before proceeding at the RTB.

The parties explained in the December 2018 hearing that there was an upcoming Small Claims Court date set for February 2019.

I note the Landlord, on her previous application from 2018, indicated the tenancy ended on August 15, 2018. It appears the Tenant was set to sign a 1 year lease, starting in August 15, 2018. However, the Tenant never fully moved in, and the relationship went sideways almost immediately. During the most recent hearing on November 18, 2021, the Landlord noted that the Tenant abandoned the unit by August 24, 2018, at the latest, as this is when the Tenant formally requested her security deposit back, and filed a dispute resolution claim for this matter.

Having reviewed the testimony and evidence on this matter, I accept that the Tenant signed a fixed term 1-year tenancy agreement, commencing on August 15, 2018. Regardless of whether or not the Tenant would have been liable for expenses that accrued due to her breach of the fixed term tenancy agreement, I find the tenancy formally ended by August 24, 2018, at the latest, as this is when the Landlord discovered the unit was abandoned. I note that a tenancy may only end in one of the following ways:

- 44** (1)A tenancy ends only if one or more of the following applies:

(a)the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i)section 45 [*tenant's notice*];

(i.1)section 45.1 [*tenant's notice: family violence or long-term care*];

(ii)section 46 [*landlord's notice: non-payment of rent*];

(iii)section 47 [*landlord's notice: cause*];

(iv)section 48 [*landlord's notice: end of employment*];

(v)section 49 [*landlord's notice: landlord's use of property*];

(vi)section 49.1 [*landlord's notice: tenant ceases to qualify*];

(vii)section 50 [*tenant may end tenancy early*];

(b)the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

(c)the landlord and tenant agree in writing to end the tenancy;

**(d)the tenant vacates or abandons the rental unit;**

(e)the tenancy agreement is frustrated;

(f)the director orders that the tenancy is ended;

(g)the tenancy agreement is a sublease agreement.

As stated above, the Tenant had abandoned the rental unit by August 24, 2018, and I find this is when the tenancy formally ended.

I note the parties were given leave to reapply, in the decision dated December 24, 2018. However, I note neither the applicant or the respondent were given any explicit extensions for statutory time limitations or time periods.

Section 60 of the Act states the following:

***Latest time application for dispute resolution can be made***

**60** (1)*If this Act does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned.*

(2)*Despite the [Limitation Act](#), if an application for dispute resolution is not made within the 2 year period, a claim arising under this Act or the tenancy agreement*

*in relation to the tenancy ceases to exist for all purposes except as provided in subsection (3).*

*(3) If an application for dispute resolution is made by a landlord or tenant within the applicable limitation period under this Act, the other party to the dispute may make an application for dispute resolution in respect of a different dispute between the same parties after the applicable limitation period but before the dispute resolution proceeding in respect of the first application is concluded.*

Since the tenancy ended on August 24, 2018, the parties had until August 24, 2020, to file their respective claims pertaining to this tenancy. The Landlord filed this application on May 17, 2021, which is many months past the deadline for application.

I find section 60 of the Act provides definitive restrictions on when an application must be made. Section 60(2) clearly states that if an application is not made within the 2-year period, the claim "ceases to exist for all purposes except as provided in" section 60(3). Section 60(3) provides a specific situation whereby an application may still be accepted if it was filed after the 2-year limitation period. However, this current application does not fit the scenario listed in section 60(3). As such, it does not meet the statutory time limit requirements.

Although the parties were given leave to reapply, back in December 2018, I do not find this was indefinite and the parties were still required to comply with the time limits under the Act. Further, I note there was no mention of any statutory time limits being extended at the time the parties were given the leave to reapply. This would have allowed the parties until August 24, 2020, to file their application under the Act, which was still 1.5 years after the December 2018 hearing. I find the Landlord's application has not been filed in time, and is therefor dismissed, in full, without leave.

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: November 18, 2021