



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **MNDL-S, MNDCL-S, FFL  
MNSDS-DR**

### **Introduction**

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

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

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

- An order for the landlord to return the security deposit pursuant to section 38.

PB attended as agent for the landlord ("the landlord"). JA attended as agent for the tenant who was not present ("the tenant"). The parties had opportunity to provide affirmed testimony, present evidence and make submissions. The hearing process was explained.

I informed the parties that recording of the hearing is prohibited under the Rules of Procedure. Each party confirmed they were not recording the hearing.

Each party confirmed their email address to which the Decision shall be sent.

Preliminary Matter # 1

The landlord withdrew the landlord's application without leave to reapply.

Preliminary Matter # 2

The landlord objected to the tenant's application on the basis that the tenant's claim was conclusively dealt with in a previous settlement Decision dated February 11, 2021. Both parties submitted a copy of the previous Decision. Reference to the file numbers appears on the first page of this Decision.

The previous Decision reflected a settlement between the parties' five Applications for Dispute Resolution, three of which originated with the landlord. Each party's claims are set out on the first page of the previous Decision.

The previous Decision stated in part as follows (emphasis added):

*Pursuant to section 63 of the Act, an arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.*

**Both parties agreed to the following final and binding settlement of all issues currently before me and all future issues relating to the tenancy, save and except for the tenant's application 910029177, filed February 8, 2021, relating to the tenant's claim for compensation due to not having a functioning furnace:**

1. *The tenant will provide vacant possession of the rental unit to the landlord on or before May 31, 2021 at 1:00 pm.*

2. *The landlord waives its entitlement to collect rent for March, April, or May 2021. The tenant does not have to pay any rent for these months.*

**This comprises the full and final settlement of all aspects of this dispute and all future disputes (except for the application referenced above, which will proceed to arbitration) relating to this tenancy between the parties. The parties gave verbal affirmation at the hearing that they understood and agreed to the above terms as legal, final and binding.**

This hearing was scheduled for one hour. The parties submitted considerable testimony and written evidence during the hearing which continued for an additional 17 minutes.

The tenant claimed that the issue before me today was not included in the previous Decision.

I have carefully considered all the arguments and evidence. I find the matter scheduled for hearing today was before the Arbitrator who made the previous Decision which reflects the settlement agreement reached by the parties. The parties both stated that the previous Decision has not been the subject of subsequent applications or proceedings.

I find the issue at this hearing was included in the previous Decision and the matter has already been decided.

I therefore find that this current application is *res judicata*, meaning the matter has already been conclusively decided and cannot be decided again. I do not have the jurisdiction to consider a matter that has already been the subject of a final and binding decision by another Arbitrator appointed under the *Act*.

The tenant's application is therefore dismissed without leave to reapply.

Conclusion

The landlord's application is dismissed without leave to reapply.

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: January 07, 2022

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Residential Tenancy Branch