



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Barclay Place Holdings Ltd. and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNRL-S, MNDCL-S, FFL

### Introduction

This review hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for compensation - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Preliminary Background

This matter was determined in an original hearing on January 7, 2022 with the Decision dated January 10, 2022 (the “Original Decision”). The Original Decision dismissed the Landlord’s application without leave to reapply. This review hearing was scheduled as a result of the Landlord’s successful review consideration application as set out in a decision dated January 16, 2022 (the Review Consideration Decision). The Review Consideration Decision ordered that the Original Decision is suspended pending the outcome of this review hearing.

### Issue(s) to be Decided

Has the Landlord made its application for dispute resolution within the time allowed?

### Background and Evidence

The Landlord's evidence is that the tenancy started on May 15, 2015. The Tenant became deceased on February 25, 2019. The Landlord made its application on June 15, 2021. The Landlord argues that the time limit under the Act was extended by the actions of the Tenant's representatives (the "PGT") who did not return the unit to the Landlord until July 2019. The Landlord argues that they could not act contrary to the PGT's actions as they are a government agency. The Landlord also argues that since the time limit provided in the Limitation Act was extended during Covid the time limit in the Act was also extended.

### Analysis

Section 44(1) of the Act provides, inter alia, that a tenancy ends if the tenancy agreement is frustrated. Given the Landlord's undisputed evidence of the death of the Tenant on February 25, 2019 I find that the tenancy became frustrated on that date and that the tenancy ended on that date.

Section 56.1(1) of the Act provides that a landlord may make an application for dispute resolution requesting

- (a) an order ending a tenancy because
  - (i) the rental unit is uninhabitable, or
  - (ii) the tenancy agreement is otherwise frustrated, and
- (b) an order granting the landlord possession of the rental unit.

Despite any actions of the PGT the Landlord had opportunity under the Act to obtain possession of the unit after the death of the Tenant. There is no evidence that the Landlord sought this opportunity, and the Landlord cannot rely on the PGT's actions as an argument that the PGT's actions extended the tenancy.

Section 60 of the Act provides, inter alia, that 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. Further, 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. There is no evidence of any extension of the Act's limitation period during Covid and as the Act provides a limitation date of two years despite any extension of the Limitation Act, I find that the Landlord had until February 26, 2021 to make its application for dispute resolution. Based on the Landlord's evidence that their application was not made until June 15, 2021, I find that the Landlord made its application outside the limitation period of 2 years under the Act. I therefore dismiss the application.

### Conclusion

The application for dispute resolution is dismissed. The Original Decision is confirmed.

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

Dated: May 30, 2022

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Residential Tenancy Branch