



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPU-DR, MNU-DR, MNRL, MNDL-S, MNDCL-S, FFL; MNDCT, ERP, RP, OLC, LRE, CNR, FFT

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession for unpaid rent and utilities, pursuant to section 55;
- a monetary order of \$25,306.77 for unpaid rent and utilities, for damage to the rental unit, and for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit of \$1,800.00, pursuant to section 38; and
- authorization to recover the \$100.00 filing fee paid for her application, pursuant to section 72.

This hearing also dealt with the tenant's application pursuant to the *Act* for:

- a monetary order of \$35,000.00 for damage or loss under the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to make emergency and regular repairs to the rental unit, pursuant to sections 32 and 33;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62;
- an order restricting the landlord's right to enter the rental unit, pursuant to section 70;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice"), pursuant to section 46;
- authorization to recover the \$100.00 filing fee paid for his application, pursuant to section 72.

The landlord, the landlord's translator, the tenant, and the tenant's lawyer attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 61 minutes.

This hearing began at 1:30 p.m. and ended at 2:31 p.m. Another participant, unrelated to this proceeding, called into the wrong hearing and exited the teleconference at 1:32 p.m. I did not discuss any evidence with either party in the presence of the unrelated participant.

The landlord, the landlord's translator, the tenant, and the tenant's lawyer all confirmed their names and spelling. The landlord and the tenant provided their email addresses for me to send a copy of this decision to both parties after the hearing.

The landlord stated that she owns the rental unit. She provided the rental unit address. She confirmed that her translator had permission to assist her at this hearing.

The tenant confirmed that his lawyer had permission to assist him at this hearing.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("*Rules*") does not permit recording of this hearing by any participant. At the outset of this hearing, the landlord, the landlord's translator, and the tenant all separately affirmed, under oath, that they would not record this hearing. At the outset of this hearing, the tenant's lawyer confirmed that she would not record this hearing.

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. They had an opportunity to ask questions, which I answered. Neither party made any accommodation requests. Both parties were provided with multiple opportunities to settle at this hearing but declined to do so.

#### Preliminary Issue – Inappropriate Behaviour by both Parties during this Hearing

Rule 6.10 of the RTB *Rules* states the following:

*6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing*  
*Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.*

Throughout this hearing, I repeatedly cautioned the landlord and the tenant about interrupting and speaking at the same time as each other and myself. I informed both parties that they failed to answer many of my questions directly, repeatedly discussed irrelevant information, and would not follow my instructions throughout this hearing. I was required to repeat my questions, clarifications, and explanation to both parties, many times throughout this hearing.

I warned the landlord about yelling at me during this hearing. The landlord had difficulty communicating with her translator during this hearing, as did the tenant with his lawyer.

Both parties confirmed that they attended previous RTB hearings regarding this tenancy, but they appeared to be unaware of the hearing procedure and the *Rules*, despite the fact that I explained same to them, repeatedly throughout this hearing.

However, I allowed both parties to attend the full hearing, despite their inappropriate behaviour, in order to allow him to present their submissions regarding their applications.

#### Preliminary Issue – Service of Documents

The tenant stated that he did not receive a copy of the landlord's notice of dispute resolution proceeding. He said that he received evidence late from the landlord on August 19 and 27, 2022.

I informed the landlord that she submitted a lot of her evidence late to the RTB, on August 26 and August 30, 2022, and September 2, 2022, less than 14 days prior to this hearing on September 2, 2022, not including the service or hearing dates, contrary to Rule 3.14 of the RTB *Rules*. I notified her that she amended her application late on August 19, 2022, adding five monetary claims and increasing her monetary amounts from \$1,302.10 to \$25,306.72.

The landlord stated that she received the tenant's notice of dispute resolution proceeding and evidence late on August 25, 2022. The tenant stated that he submitted a lot of evidence, but he did not know if all of it was uploaded to the RTB website.

The tenant submitted a lot of his evidence late to the RTB, on August 19, 20, and 31, 2022, less than 14 days prior to this hearing, not including the service or hearing dates, contrary to Rule 3.14 of the RTB *Rules*. The tenant also submitted a late amendment to

his application on August 19, 2022, to add claims to dispute the landlord's 10 Day Notice and an order requiring the landlord to complete emergency repairs.

### Preliminary Issue - Severing Claims

The following RTB *Rules* state (my emphasis added):

#### *2.3 Related issues*

*Claims made in the application must be related to each other. **Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.***

#### *6.2 What will be considered at a dispute resolution hearing*

*The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application.*

*The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [Related issues]. **For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.***

RTB *Rules* 2.3 and 6.2 state that an Arbitrator may refuse to consider unrelated issues in applications. I informed both parties that the landlord applied for six different claims in her application, and the tenant applied for seven different claims in his application, totalling thirteen claims in both applications.

I informed both parties that they were provided with a priority hearing date, due to the urgent nature of their applications related to the 10 Day Notice. I notified them that this was the main, central, urgent and important issue to be dealt with at this hearing. I informed them that their monetary claims were non-urgent, lower priority issues.

I informed both parties that their monetary and other claims, aside from the 10 Day Notice, would be severed and dismissed with leave to reapply. However, both parties repeatedly argued with me about my decision during this hearing, insisting that I deal with all of their claims, including their monetary claims, totalling \$60,506.72, in both applications.

I repeatedly informed both parties that the maximum hearing time for both applications was 60 minutes and this hearing lasted 61 minutes.

#### Preliminary Issue – Adjournment Request

The tenant's lawyer asked if this hearing could be adjourned to allow both parties to properly serve evidence to the other party and to deal with the monetary claims at a later date. The landlord did not provide a response to same.

I did not grant an adjournment of both parties' applications. I made this decision after taking into consideration the criteria established in Rule 7.9 of the RTB *Rules*, which includes the following provisions:

*Without restricting the authority of the arbitrator to consider the other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:*

- *the oral or written submissions of the parties;*
- *the likelihood of the adjournment resulting in a resolution;*
- *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and*
- *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
- *the possible prejudice to each party.*

I find that an adjournment would not likely result in a resolution of both applications. Both parties were offered multiple opportunities during this hearing to settle and declined to do so.

I find that the need for an adjournment arises out of the intentional actions and neglect of both parties. Both parties confirmed that they had attended previous RTB hearings regarding this tenancy, as recently as last year in 2021. Both parties received notices of dispute resolution proceedings for their own applications, including information regarding service and deadlines, as per the RTB *Rules*. However, both parties submitted and received late evidence and amendments, less than 14 days prior to this hearing, despite filing their application months prior in April and May 2022.

I informed the tenant's lawyer that an adjournment would not avoid the severing provisions of the RTB *Rules*.

I find that an adjournment of this matter would not result in an efficient or expeditious resolution of both applications. Neither party provided any reasonable time frames or dates when they would be able to serve evidence in a timely manner or return fully prepared for this hearing. Both parties had months to adequately prepare for this hearing and failed to do so.

Both parties expended 61 minutes of this 60-minute maximum hearing time, mainly arguing with each other and myself regarding, service, deadlines, and evidence, and other issues.

#### Preliminary Issue – Dismissal of Applications

Pursuant to section 59(2)(b) of the *Act*, applications must include the full particulars of the disputes that are to be the subject of the dispute resolution proceedings. The purpose of the provision is to provide both parties with notice and enough information to know the other party's claims so that they can properly respond.

Pursuant to section 59(5)(a) of the *Act*, I can refuse to accept applications if they do not disclose disputes that may be determined. Both parties filed their own applications, and, as applicants, have the burden of proof, on a balance of probabilities, to apply for the correct claims, provide sufficient particulars and evidence of their claims, and prove their claims at a hearing.

The landlord filed her application on May 12, 2022, and the tenant filed his application on April 30, 2022, and this hearing occurred on September 2, 2022. Both parties had ample time to know the full details of their applications and to amend and serve proper notice to the other party, prior to this hearing, but failed to do so in a timely manner.

The tenant asked for leave to reapply for his application. I informed both parties that their applications were both dismissed with leave to reapply, except for the \$100.00 filing fees paid for both applications. I notified them that they could file new applications, if they want to pursue their claims in the future. Both parties confirmed their understanding of same.

#### Conclusion

Both parties' applications to recover the \$100.00 filing fees paid for their applications, is dismissed without leave to reapply.

The remainder of both parties' applications is dismissed with 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: September 02, 2022

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Residential Tenancy Branch