



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRT, RP, OLC, FFT

### Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- a monetary order pursuant to ss. 33 and 67 for repayment for emergency repairs;
- an order pursuant to s. 32 for repairs to the rental unit;
- an order pursuant to s. 62 that the Landlord comply with the *Act*, Regulations, and/or the tenancy agreement; and
- return of his filing fee pursuant to s. 72.

K.K. appeared as the Tenant. Y.K. and M.L. appeared as the respondent Landlords.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

At the outset of the hearing, I enquired whether the Tenant had served his application, amendment, and evidence on the Landlord. I was advised by the parties that the Tenant served his application materials in three packages, with the Landlord acknowledging receipt on November 11, 2022, December 8, 2022, and December 13, 2022. The Landlord raised issue with the last package, saying it was late.

Rule 3.14 of the Rules of Procedure requires applicants to serve their evidence at least 14 days prior to the hearing. The hearing for this matter took place on December 23, 2022. I find that the evidence package of December 13, 2022 was served late and, as such, it would be procedurally unfair to include or consider the evidence provided. Accordingly, the contents of the last evidence package were identified and excluded. With respect to the balance of the Tenant’s application materials, I find that pursuant to

s. 71(2) of the *Act* the Landlord was sufficiently served based on their acknowledged receipt within the proscribed time limits.

The Landlord advised having served the Tenant with his response evidence, which the Tenant acknowledges receiving without objection. Based on its acknowledged receipt without objection, I find that pursuant to s. 71(2) of the *Act* the Landlord's response evidence was sufficiently served on the Tenant.

#### Preliminary Issue – Tenant's Claims

I was advised at the beginning of the hearing that the Tenant moved out of the rental unit on November 1, 2022. Based on this confirmation from the parties, I find that the tenancy ended on November 1, 2022.

Given that the tenancy is over, certain issues raised in the Tenant's application are now moot, namely the claims under ss. 32 (repairs to the rental unit) and 62 (order that the Landlord comply). Due to this, I dismiss the claims under ss. 32 and 62 without leave to reapply.

#### Preliminary Issue – Jurisdiction

In preparation for the hearing, it became apparent that the parties have two separate tenancies. One was a residential tenancy that ended on November 1, 2022 and the other was a commercial tenancy dealing with a storefront at the same address. At the hearing, I was advised that the residential portion was on the second floor and the commercial space was on the main floor.

I cautioned the Tenant that the Residential Tenancy Branch only has jurisdiction granted to it by the *Act*, which only applies to residential tenancies. The Tenant argued I had jurisdiction and testified that he covered certain repair costs for the property, being re-pavement of a parking area and replacement of a water main. It was argued by the Tenant that he should not cover these expenses as they ought to have been covered by the Landlord pursuant to the residential tenancy. In the Tenant's telling, 97% of the water is used by the residential portion of the property. The Tenant also raised issue with his paying property taxes, utilities, insurance, and maintenance expenses for the property.

The Landlord argued the Residential Tenancy Branch does not have jurisdiction for this matter and that the monetary award sought by the Tenant were in relation to his responsibilities under the commercial lease. The Landlord provides a copy of the commercial lease in which the costs are to be apportioned.

I accept that it is unusual for parties in a residential tenancy to also have a commercial tenancy within the same building. I understand that this may lead to issues, such as here, where conflicting obligations of landlords and tenants may be confused between the respective tenancy agreements. However, people are free to govern themselves in the manner of their choosing. There is no general prohibition preventing the same individuals in a residential tenancy from contracting with one another for a commercial tenancy.

I also note that the Tenant and Landlord are individuals under the residential tenancy, though the tenant in the commercial lease is a corporate entity, which is presumably owned by the Tenant. I highlight this because it would seem to me that there is an issue on who is advancing the claim as the costs incurred under the commercial tenancy would have been paid by the commercial tenant, which is a corporate entity and not the Tenant himself.

All this leads me to conclude that I do not have jurisdiction to adjudicate this dispute as the Tenant's claims are in relation to expenses incurred under the commercial lease. The Tenant argues that Landlord is playing a double game and says it is unfair. What the Tenant fails to appreciate is that he, or more accurately his company, entered into the commercial lease, agreed to its terms, and took on its obligations. The Tenant was under no obligation to do so. He could have negotiated a different apportionment of costs under the commercial lease, not entered into the commercial lease, or not entered into the residential tenancy in his personal capacity. He had options. It is inappropriate, in my view, for him to seek indemnification of these expenses by making use of the residential tenancy and the *Act*, which is clearly outside its jurisdiction.

I find that I do not have jurisdiction to adjudicate this dispute. Accordingly, the claim for compensation is dismissed without leave to reapply. As the application was unnecessary, I also dismiss the Tenant's claim for the return of his filing fee, again 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: December 29, 2022

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Residential Tenancy Branch