



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      File \*\*\*\*\*0477: CNC, MNDCT, DRI-ARI-C, LRE, OLC  
File \*\*\*\*\*2612: OPR, OPN, MNRL-S, MNDCL-S, FFL  
File \*\*\*\*\*1347: CNR

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear a cross application regarding the above-noted tenancy.

Tenant CR's application file \*\*\*\*\*0477 lists applicants tenants CR and DR and respondents landlord NM and DR. This application is for:

- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47;
- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation (Regulation) or tenancy agreement, pursuant to section 67;
- an order to dispute a rental increase, pursuant to section 43
- an order to restrict or suspend the landlord's right of entry, under section 70; and
- an order for the landlord to comply with the Act, the Regulation, and/or tenancy agreement, pursuant to section 62.

Landlord DR's application file \*\*\*\*\*2612 lists applicants landlord DR and NM and respondent tenant CR. This application is for:

- an order of possession under a 10-Day Notice to End Tenancy for Unpaid Rent, pursuant to sections 46 and 55;
- an order of possession under a tenant's notice to end a tenancy, pursuant to sections 45 and 55;
- a monetary order for unpaid rent, pursuant to section 26;
- a monetary order for loss under the Act, the Regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain the security deposit, under section 38; and
- an authorization to recover the filing fee for this application, under section 72.

Tenant CR's application file \*\*\*\*\*1347 lists applicant tenant CR and respondent landlords NM and DR. This application is for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, pursuant to section 46.

I left the teleconference connection open until 11:59 A.M. to enable the landlord NM to call into this teleconference hearing scheduled for 11:00 A.M. Landlord NM did not attend the hearing. Tenant CR (the tenant) and landlord DR (the landlord) attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant, the landlord, and I were the only ones who had called into this teleconference.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

#### Preliminary Issue – Landlord NM

Both parties affirmed the rental unit is a basement suite in a single family house.

Both parties affirmed that NM is the owner of the house, the landlord rented the entire house from NM and sublet the basement rental unit to the tenant. The tenant and the landlord had a verbal tenancy agreement.

Both parties affirmed that during the tenancy landlord NM also acted as a landlord to the tenant, as NM had interactions with the tenant, made changes to the tenancy agreement, and entered the basement rental unit as the landlord.

#### Preliminary Issue – Moot Claims

Both parties agreed the tenant moved out on October 01, 2022.

The applications for an order of possession, an order to cancel the notices to end tenancy, an order to restrict or suspend the landlord's right of entry and an order

for the landlord to comply with the Act are moot since the tenancy has ended and the tenant left the rental unit.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the application for an order to cancel the ten day notice to end tenancy.

Accordingly, I dismiss application \*\*\*\*\*1347 in its entirety without leave to reapply.

I dismiss without leave to reapply the tenant's claims in file \*\*\*\*\*0477 for an order to cancel the one month notice to end tenancy, an order to restrict or suspend the landlord's right of entry and for an order for the landlord to comply with the Act.

I dismiss without leave to reapply the landlord's claims in file \*\*\*\*\*2612 for an order of possession.

#### Preliminary Issue – Service of application \*\*\*\*\*0477

The tenant affirmed that he served the notice of hearing for application \*\*\*\*\*0477 in person to the landlord. The tenant listed NM's address for service in the application because he received text messages or mail from NM containing his address for service. The tenant is not aware of NM's current address for service and did not serve NM.

The tenant submitted 119 files into evidence. These files are not numbered or organized, as required by Rule of Procedure 3.7.

Section 89(1) of the Act states:

An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].

Residential Tenancy Branch Policy Guideline 12 states:

All parties named on an application for dispute resolution must be served notice of

proceedings, including any supporting documents submitted with the application. **Where more than one party is named on an application for dispute resolution, each party must be served separately. Failure to serve documents in a way recognized by the Legislation may result in the application being adjourned, dismissed with leave to reapply, or dismissed without leave to reapply.**

(emphasis added)

Based on the tenant's testimony, I find the tenant did not serve the two respondents landlords. As noted above, each respondent must receive the notice of hearing and the evidence.

As such, I dismiss the tenant's application for a monetary order with leave to reapply. Leave to reapply is not an extension of timeline to apply.

#### Preliminary Issue – Service of application \*\*\*\*\*2612

The landlord affirmed that he is not authorized to represent NM. The landlord listed NM as an applicant and copied NM's address for service from the notice of hearing for application \*\*\*\*\*0477.

Section 62(2) of the Act states: "The director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this Act."

Residential Tenancy Branch Policy Guideline 12 states:

The decision whether to make an order that a document has been sufficiently served in accordance with the Legislation or that a document not served in accordance with the Legislation is sufficiently given or served for the purposes of the Legislation is a decision for the arbitrator to make on the basis of all the evidence before them.

Considering that the landlord is not authorized to represent NM and that the landlord listed NM's address for service using the address for service provided in the notice of hearing for application \*\*\*\*\*0477, and also considering that the tenant affirmed he does not know NM's current address for service, I find that it is not fair to proceed with application file \*\*\*\*\*2612.

As such, I dismiss the landlord's application for a monetary order and for an authorization to retain the security deposit with leave to reapply. Leave to reapply is not an extension of timeline to apply.

The landlord is cautioned to follow the provisions of section 38 of the Act in regard to the security deposit.

As the landlord was not successful, the landlord must bear the cost of the filing fee.

Email address for service

The landlord and the tenant agreed to be served documents, including new notices of hearing, via email.

The email addresses are recorded on the cover page of this decision.

Conclusion

I dismiss the tenant's application \*\*\*\*\*0477 for a monetary order with leave to reapply and the remaining claims without leave to reapply.

I dismiss the landlord's application \*\*\*\*\*2612 for a monetary order and for an authorization to retain the security deposit with leave to reapply and the remaining claims without leave to reapply.

I dismiss the tenant's application \*\*\*\*\*1347 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 21, 2022

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Residential Tenancy Branch