



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding MENETHIL GROUP DEVELOPMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, OLC, FFT

### Introduction

This hearing dealt with the tenant's application, filed on October 5, 2022, pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause ("1 Month Notice"), pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 62; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The landlord did not attend this hearing. The tenant and her advocate 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 13 minutes from 11:00 a.m. to 11:13 a.m.

The tenant and her advocate confirmed their names and spelling. The tenant asked that I send a copy of this decision to her advocate's email address. The tenant's advocate provided her email address for me to send this decision to the tenant after this hearing.

The tenant confirmed that her advocate had permission to represent her at this hearing. She identified her advocate as the primary speaker for the tenant at this hearing. The tenant provided the rental unit address.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("Rules") does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, the tenant and her advocate both separately affirmed, under oath, that they would not record this hearing.

The tenant and her advocate had an opportunity to ask questions, which I answered. They did not make any adjournment or accommodation requests. They confirmed that they were ready to proceed with this hearing.

#### Preliminary Issue – Service of Documents

The tenant's advocate stated that the landlord was served with the tenant's paper application for dispute resolution, fact sheet, and respondent instructions on October 20, 2022, by way of registered mail. The tenant provided a Canada Post receipt and the tenant's advocate provided the tracking number verbally during this hearing. The tenant said that the mail was sent back to her. The tenant said that the mail was sent to the address provided by the landlord in a business card in September 2022.

In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with the tenant's application on October 25, 2022, five days after its registered mailing.

The tenant's advocate stated that the landlord was served with the tenant's evidence package on January 23, 2023, by way of registered mail. She said that the tenant did not provide a copy of the Canada Post receipt or tracking report because the evidence was uploaded by the tenant to the RTB online dispute access site first, before it was mailed to the landlord. The tenant's advocate provided a Canada Post tracking number verbally during this hearing. The tenant said that the mail was sent to the address provided by the landlord in a business card in September 2022.

In accordance with sections 88 and 90 of the *Act*, I find that the landlord was deemed served with the tenant's evidence package on January 28, 2023, five days after its registered mailing.

#### Preliminary Issue – 1 Month Notice

The tenant provided the following statement regarding this claim in her paper application (redacted for confidentiality):

*"I chose not to sign a new tenancy agreement with [individual landlord's first name A] because it was excesssically [sic] high."*

At the outset of this hearing, the tenant and her advocate confirmed that the tenant did not receive a 1 Month Notice in the approved RTB form, from the landlord. They stated that the tenant only received a letter to move out from the landlord. The tenant provided a copy of a letter, dated September 29, 2022, from the landlord, telling the tenant to move out by October 31, 2022, as evidence for this hearing.

Sections 47 and 52 of the *Act*, state in part (my emphasis added):

*Landlord's notice: cause*

*47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:...*

*(2) A notice under this section must end the tenancy effective on a date that is*

*(a) not earlier than one month after the date the notice is received, and*

*(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*

**(3) A notice under this section must comply with section 52 [form and content of notice to end tenancy].**

...

**52 In order to be effective, a notice to end a tenancy must be in writing and must...**

**(e) when given by a landlord, be in the approved form.**

The tenant and her advocate provided undisputed, affirmed testimony at this hearing. The tenant did not receive a 1 Month Notice in the approved RTB form from the landlord, as required by section 52 of the *Act*. Accordingly, the tenant's application to cancel the landlord's 1 Month Notice, pursuant to section 47 of the *Act*, is dismissed without leave to reapply. The landlord is not issued an order of possession against the tenant, pursuant to section 55 of the *Act*.

I verbally informed the tenant and her advocate of my decision during this hearing. They affirmed their understanding of same.

#### Preliminary Issue – Order to Comply

The tenant provided the following statement regarding this claim in her paper application:

*“I want the landlord to comply with the previous and current agreement regarding my tenancy \$650.00”*

During this hearing, the tenant’s advocate confirmed that the tenant provided the above statement in her paper application, regarding this claim.

I informed the tenant and her advocate that the *Act* does not permit me to make any orders to comply, to force the landlord to sign any tenancy agreement for any amount of rent, with the tenant.

Pursuant to section 62(4)(b) of the *Act*, I can refuse to accept an application if it does not disclose a dispute that may be determined. In her application, the tenant did not identify any sections of the *Act*, for her claim for an order to comply, that I can make a decision about. I cannot decide hypothetical or future events, that have not yet occurred. I cannot engage in an academic exercise, when an event may or may not happen in the future. I cannot force one party to sign an agreement with another party, including a tenancy agreement for an amount of rent.

I cannot provide legal advice on how parties should behave or conduct their tenancies, as the applicable *Act*, *Regulation*, and Policy Guidelines provide this information. The online RTB website, as well as the fact sheets, information sheets, and notice of dispute resolution proceeding document that the tenant received when she filed this application, provide links and references to the above applicable laws and guidelines.

I verbally informed the tenant and her advocate that the tenant’s application for an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, was dismissed without leave to reapply.

#### Preliminary Issue – Filing Fee

The tenant stated that she wanted her \$100.00 filing fee back for this application.

A filing fee is a discretionary award issued by an Arbitrator, usually when an applicant party is successful in their application, after a decision is made by an Arbitrator, on the merits of the applicant’s application.

The tenant was wholly unsuccessful in her application, as it was dismissed in its entirety without leave to reapply, as noted above. Therefore, the tenant is not entitled to recover the filing fee from the landlord.

I verbally informed the tenant and her advocate that the tenant's application to recover the \$100.00 filing fee was dismissed without leave to reapply.

#### Preliminary Issue – Inappropriate Behaviour by the Tenant 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.*

During this hearing, the tenant interrupted me, spoke at the same time as me, and argued with me. I cautioned the tenant, but she continued with this inappropriate behaviour. Despite this behaviour, I allowed the tenant to attend the full hearing.

The tenant argued with me and interrupted me when I told her that since she did not receive a 1 Month Notice in the approved RTB form, I could not cancel it, because there was no notice to cancel. When I asked her to allow me to speak and provide my decision without interruption, she claimed that this is why she brought an advocate to this hearing.

The tenant argued with me when I told her advocate that I would send my decision to the tenant at the advocate's email. The tenant repeatedly argued that I said I would send my decision to the tenant, not her advocate. I repeatedly explained to the tenant that I already confirmed her advocate's email address during this hearing, so that I could send the tenant a copy of my decision.

When I provided my decision to dismiss the tenant's application, the tenant became upset and argued with me. The tenant and her advocate asked for my name, which I provided to them, during this hearing. I informed them that my name would also be on copy of this written decision that would be sent to them after this hearing.

I repeatedly explained my decision and reasons to the tenant and her advocate, during this hearing. I repeatedly asked them if they had any questions regarding my decision, during this hearing. I repeatedly answered their questions regarding my decision, during this hearing.

### Conclusion

The tenant's entire 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: February 17, 2023

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Residential Tenancy Branch