



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding WOODSMERE HOLDINGS CORP.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OLC, FFT

### Introduction

On September 22, 2022, the Tenant applied for a Dispute Resolution proceeding seeking an Order to comply pursuant to Section 62 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing, and D.P. attended the hearing as an agent for the Landlord. He advised of the correct name of the Landlord, and the Style of Cause on the first page of this Decision has been amended accordingly.

At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that she served the Notice of Hearing and evidence package to the Landlord’s address on the tenancy agreement on October 8, 2022, by registered mail (the registered mail tracking number is noted on the first page of this Decision). She checked the tracking history during the hearing, and testified that this package was delivered on October 14, 2022.

D.P. confirmed that the Landlord’s mailing address was the same as the address that

the Tenant sent the Notice of Hearing package to, but he advised that he did not receive this package. However, he confirmed that the former property manager was aware of this dispute and that she only sent him the documents, that she had in her possession, in or around December 2022.

Based on the Tenant's solemnly affirmed testimony and the evidence of this package being received, in conjunction with D.P.'s solemnly affirmed testimony that an employee of the Landlord had seemingly been aware of this hearing for some time, I am satisfied that the Landlord was, more likely than not, duly served the Tenant's Notice of Hearing and evidence package on October 14, 2022. As such, I was satisfied that the hearing would proceed, regardless of whether or not D.P. was provided with all of the served documents from his colleague. In addition, I have accepted the Tenant's documentary evidence and will consider it when rendering this Decision.

D.P. confirmed that the Landlord did not submit any documentary evidence for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Is the Tenant entitled to an Order to comply?
- Is the Tenant entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on December 15, 2021, that rent was currently established at \$1,422.00 per month, and that it was due on the first day of each month. A security deposit of \$697.50 and a pet damage deposit of \$697.50 were

also paid. Only two pages of the tenancy agreement were submitted as documentary evidence for consideration by the Tenant.

The Tenant advised that she had been away from the rental unit for approximately 30 days, and that she returned at roughly midnight on September 8, 2022. She testified that she was unloading her vehicle when a drunk resident of the building started recording her, and was yelling at her. The Tenant stated that she told this person to mind her own business, and informed the property manager of this incident; however, she submitted that the property manager would not defuse the situation and stated that it was not her responsibility to do so as it was a police matter. The Tenant testified that this drunk resident then approached her and “got in her face”, so the Tenant acknowledged pushing this other resident and hitting her phone.

She stated that the police were called about this incident, and they showed up the next day to arrest the Tenant for assault. However, she advised that once she informed the police of what actually happened, they did not end up arresting her and closed the file. She stated that the police told the offending resident to leave the Tenant alone, and she also stated that the offending resident’s friend will occasionally say hello, but she chooses to ignore this person. The Tenant then advised that there have been no further incidents between her and the offending resident. She could not point to what breaches of the *Act* she wants an Order for the Landlord to comply with, but she stated that she disagrees with the Notice of Infraction, that was served to her by the Landlord in relation to this incident, as the situation was not her fault. She also confirmed that she was never served with a notice to end her tenancy by the Landlord.

D.P. advised that the Landlord has never served the Tenant with a notice to end her tenancy, but did serve the offending resident with one. He indicated that he advises all employees not to engage when there is a situation that would require police intervention, and that they should call the police in a situation such as this.

### Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

When reviewing the totality of the evidence before me, it is clear that the Tenant engaged in an altercation with another resident of the building, that devolved to the point that necessitated the police to conduct an investigation. While the Tenant claimed that she did not instigate this incident, it does appear as if she did play some role in causing it to escalate though. Regardless, the Tenant acknowledged that this was a one-time incident, and she could not point to any Sections of the *Act* that the Landlord breached that would necessitate an Order to comply with.

Furthermore, this appears to have been an isolated incident, and the Tenant did not make any submissions with respect to suffering some sort of loss of quiet enjoyment. It appears from the Tenant's submissions that the sole purpose for this Application was to refute the allegations in the Notice of Infraction so that it "would not be on [her] record". However, as there are no breaches of the *Act* that I can ascertain from the Tenant's submissions, and as there was no notice to end the tenancy served by the Landlord, there is nothing for me to consider or Order in this Application.

As the Tenant was not successful in this claim, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

### Conclusion

The Tenant's 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 7, 2023

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Residential Tenancy Branch