



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S, MNDCL-S, FFL; MNDCT, DRI, RR, PSF, LRE, LAT, OLC, FFT

### Introduction

This hearing dealt with the landlord's application, filed on September 23, 2023, pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order of \$1,517.86 for unpaid rent and for compensation 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 \$1,900.00 and pet damage deposit of \$400.00 (collectively "deposits"), 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, filed on July 20, 2023, pursuant to the *Act* for:

- a monetary order of \$1,550.00 for compensation for damage or loss under the *Act*, *Regulation*, or tenancy agreement, pursuant to section 67;
- an order regarding a disputed additional rent increase of \$400.00, pursuant to section 43;
- an order allowing the tenant to reduce rent of \$300.00 for repairs, services, or facilities agreed upon but not provided, pursuant to section 65;
- an order requiring the landlord to provide services or facilities required by law, pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit, pursuant to section 70;
- authorization to change the locks to the rental unit, pursuant to section 70;
- an order requiring the landlord to comply with the *Act*, *Regulation*, or tenancy agreement, pursuant to section 62; and

- authorization to recover the \$100.00 filing fee paid for her application, pursuant to section 72.

The landlord and the tenant attended this 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 43 minutes from 11:00 a.m. to 11:43 a.m.

Both parties confirmed their names and spelling. Both parties provided their email addresses for me to send copies of this decision to them.

The landlord confirmed that she owns the rental unit. She 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, both parties separately affirmed that they would not record this hearing.

#### Preliminary Issue – Hearing and Settlement Options

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. I informed them that I could not provide legal advice to them. Both parties had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests.

Both parties confirmed that they were ready to proceed with this hearing. Both parties were offered multiple opportunities to settle at the beginning and end of this hearing but declined to do so, except for the settlement of one claim, as noted below.

I cautioned the tenant that if I dismissed her application without leave to reapply, she would not receive the orders, for which she applied. The tenant affirmed that she was prepared to accept the above consequences if that was my decision.

I cautioned the landlord that if I granted the tenant’s application, orders would be made against the landlord. The landlord affirmed that she was prepared to accept the above consequences if that was my decision.

### Preliminary Issue – Service of Documents

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with section 89 of the *Act*, I find that both parties were duly served with other party's application.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to remove the names of the other two tenants, who were named as tenant-applicant parties in the tenant's application only. The tenant requested this amendment, stating that the other two tenants moved out on November 1, 2023, and they did not require the tenant's application relief any longer. The landlord consented to same. I find no prejudice to either party in making this amendment.

### Preliminary Issue – Severing Both Parties' Monetary Claims

The following RTB *Rules* are applicable and 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.***

Rules 2.3 and 6.2 of the RTB *Rules of Procedure* allow me to sever issues that are not related to both parties' main applications. The landlord applied for 4 different claims and the tenant applied for 8 different claims, for a total of 12 different claims in both parties' applications.

The tenant filed her application first on July 20, 2023, prior to the landlord's application, which was filed on September 23, 2023. The tenant was provided with a priority hearing date, due to the urgent nature of her 4 claims, for an order requiring the landlord to provide services or facilities required by law, an order to suspend or set conditions on the landlord's right to enter the rental unit, authorization to change the locks to the rental unit, an order requiring the landlord to comply with the *Act, Regulation*, or tenancy agreement. The above claims are the central and most important, urgent issues to be dealt with at this hearing. The landlord's entire monetary application is unrelated to the tenant's priority ongoing tenancy claims. Both parties affirmed their understanding of same.

I informed both parties that their remaining monetary claims are unrelated, non-urgent lower priority issues, and they can be severed at a hearing. This is in accordance with Rules 2.3 and 6.2 of the RTB *Rules* above. Both parties submitted voluminous documents and evidence for their monetary claims. Each party applied for 3 different monetary claims in their application. I informed both parties that after 43 minutes of this 60-minute maximum hearing time, there was insufficient time to deal with both parties' remaining monetary claims at this hearing. Both parties affirmed their understanding of same.

I informed both parties that their monetary claims were severed and dismissed with leave to reapply. The landlord's entire application is dismissed with leave to reapply, except for the \$100.00 filing fee which is dismissed without leave to reapply. The tenant's application for a monetary order of \$1,550.00 for compensation for damage or loss under the *Act, Regulation*, or tenancy agreement, an order regarding a disputed additional rent increase of \$400.00, and an order allowing the tenant to reduce rent of \$300.00 for repairs, services, or facilities agreed upon but not provided, is dismissed with leave to reapply. I notified them that they can file new RTB applications, if they want to pursue these claims in the future. Both parties affirmed their understanding of same.

#### Settlement of Tenant's 1 Claim

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision and orders.

During this hearing, the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of 1 claim in the tenant's application.

Both parties agreed to the following final and binding settlement of 1 claim in the tenant's application, related to authorization to change the locks to the rental unit:

1. Both parties agreed that the tenant is permitted to change the locks to her rental unit, which is a two-bedroom suite;
2. The tenant agreed to pay the cost of changing the above locks, and not to pursue the landlord for the cost of same, at any time in the future;
3. Both parties agreed that the tenant will provide the landlord with a copy of the new keys after the above locks are changed;
4. Both parties agreed that the tenant will give a copy of the new keys to another "tenant M," by November 10, 2023, and tenant M will provide these new keys to the landlord;
  - a. The tenant agreed to inform the landlord of the time when she provides the new keys to tenant M on November 10, 2023.

These particulars comprise the full and final settlement of all aspects of the tenant's 1 claim in her application. Both parties understood and agreed to the above terms, free of any duress or coercion. Both parties understood and agreed that the above terms are legal, final, binding, and enforceable, which settles one claim in the tenant's application.

The terms and consequences of the above settlement were reviewed in detail, with both parties during this 43-minute hearing. Both parties were provided with ample time during this hearing to think about, discuss, negotiate, and decide about the above settlement terms.

The parties declined to settle the tenant's remaining 3 ongoing tenancy claims, as noted below. The tenant asked that I make a decision about them.

#### Issues to be Decided

Is the tenant entitled to an order requiring the landlord to provide services or facilities required by law?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, *Regulation*, or tenancy agreement?

Is the tenant entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit?

Is the tenant entitled to recover the filing fee paid for her application?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on February 10, 2023. Both parties did not sign a written tenancy agreement. Monthly rent in the current amount of \$1,900.00 is payable on the first day of each month. The tenant paid a security deposit of \$1,900.00 and a pet damage deposit of \$400.00 to the landlord. The landlord continues to retain both deposits in full.

The tenant testified regarding the following facts. Regarding the providing services and facilities claim, the tenant's hydro, electricity, and Wi-Fi are included in the tenancy agreement. The tenant was not provided with Wi-Fi and was not informed when she signed the tenancy agreement that Wi-Fi was not going to be provided at the beginning of the tenancy. She found out later that she had to get her own Wi-Fi. Regarding the order to comply claim, the Wi-Fi was checked off in the tenancy agreement was not provided to the tenant. Regarding the restriction of the landlord's right to enter the rental unit, the tenant was only told once in a while, that someone would be moving something from the garage. The landlord shows up once a week. There is no 24 hour notice given by the landlord to the tenant. The landlord randomly shows up to take photographs of the property without telling the tenant and giving her a chance to clean.

The landlord testified regarding the following facts. Regarding the landlord's restriction to enter claim, this is a big property, with three buildings and a garage. The landlord uses the garage, which is a common space, and no notice is required to be given to the tenant. The landlord never entered the tenant's space. There are 11 tenants on the property. The garage was there before the tenant moved in. The tenant agreed to rent the property "as is." Regarding the Wi-Fi, the tenant's basement suite was brand new when she moved in. The tenant did not raise the issue of the Wi-Fi when she moved in February 2023, she only raised it in this application, which she filed in July 2023. The landlord does not agree to provide free Wi-Fi to the tenant for this rental unit.

The tenant stated the following facts in response to my questions. The landlord refused to sign the tenancy agreement. The tenant does not have a written contract or a signed

tenancy agreement from both parties entitling her to free Wi-Fi at the rental unit. The tenant's order to comply and providing services and facilities claims both relate to the Wi-Fi issue. The garage is a common area, where the landlord is not required to provide notice to the tenant, before entry. The tenant does not have exclusive possession of the garage because it is a common area. The landlord did not enter the tenant's rental unit, which is a two-bedroom suite. The side of the garage has garbage, boxes, and very loud noises by the landlord.

## Analysis

### **Burden of Proof**

The tenant, as the applicant, has the burden of proof, on a balance of probabilities, to present and prove her application. The *Act*, *Regulation*, *RTB Rules*, and Residential Tenancy Policy Guidelines require the tenant to provide sufficient evidence of her claims, in order to obtain orders against the landlord.

The tenant received an application package from the RTB, including instructions regarding the hearing process. The tenant received a document entitled "Notice of Dispute Resolution Proceeding," dated July 21, 2023, ("NODRP") from the RTB, after filing this application. This document contains the phone number and access code to call into this hearing.

The NODRP states the following at the top of page 2, in part (my emphasis added):

**The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent.**

- **It is important to have evidence to support your position with regards to the claim(s) listed on this application. For more information see the Residential Tenancy Branch website on submitting evidence at [www.gov.bc.ca/landlordtenant/submit](http://www.gov.bc.ca/landlordtenant/submit).**
- **Residential Tenancy Branch Rules of Procedure apply to the dispute resolution proceeding. View the Rules of Procedure at [www.gov.bc.ca/landlordtenant/rules](http://www.gov.bc.ca/landlordtenant/rules).**
- *Parties (or agents) must participate in the hearing at the date and time assigned.*
- *The hearing will continue even if one participant or a representative does not attend.*

- **A final and binding decision will be sent to each party no later than 30 days after the hearing has concluded.**

The NODRP states that a legal, binding decision will be made and links to the RTB website and the *Rules* are provided in the same document.

The tenant received a detailed application package from the RTB, including the NODRP documents, with information about the hearing process, notice to provide evidence to support her application, and links to the RTB website. It is up to the tenant to be aware of the *Act*, *Regulation*, *RTB Rules*, and Residential Tenancy Policy Guidelines. It is up to the tenant to provide sufficient evidence of her claims, since she chose to file her application on her own accord.

## **Legislation, Policy Guidelines, and Rules**

The following RTB *Rules* are applicable and state the following, in part:

### *6.6 The standard of proof and onus of proof*

*The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.*

*The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.*

...

### *7.4 Evidence must be presented*

*Evidence must be presented by the party who submitted it, or by the party's agent...*

...

### *7.17 Presentation of evidence*

*Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...*



*7.18 Order of presentation*

*The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...*

I find that the tenant did not sufficiently present and prove her claims and evidence, as required by Rules 6.6 and 7.4 of the RTB *Rules*, despite having multiple opportunities to do so, during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules*. The tenant failed to sufficiently review and explain the documents she submitted in support of her application.

This hearing lasted 43 minutes. The tenant had ample time to present her application and respond to the landlord's evidence. I repeatedly asked the tenant if she had any other information to present and if she wanted to respond to the landlord's evidence.

**Is the tenant entitled to an order requiring the landlord to provide services or facilities required by law and an order requiring the landlord to comply with the *Act, Regulation*, or tenancy agreement?**

The tenant confirmed that her application for an order requiring the landlord to provide services or facilities required by law, and for an order requiring the landlord to comply with the *Act, Regulation*, or tenancy agreement, related to the Wi-Fi issue at the rental unit.

Section 62 of the Act states the following, in part (my emphasis added):

Director's authority respecting dispute resolution proceedings

62(1) *Subject to section 58, the director has authority to determine*

**(b) any matters related to that dispute that arise under this Act or a tenancy agreement.**

...

(3) *The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, **including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement** and an order that this Act applies.*

(4) *The director may dismiss all or part of an application for dispute resolution if*  
**(a) there are no reasonable grounds for the application or part,**  
**(b) the application or part does not disclose a dispute that may be determined under this Part, or...**

Section 65 of the *Act* states the following, in part (my emphasis added):

*Director's orders: breach of Act, regulations or tenancy agreement*  
65(1) Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], **if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:...**

The tenant asked for the landlord to provide her with Wi-Fi, free of charge, at the rental unit, as part of her tenancy agreement. The landlord disputed the tenant's claim, claiming that the Wi-Fi is not included in the monthly rent as part of the rental unit. The landlord said that the tenant did not make any complaints or raise any issues regarding the Wi-Fi at the beginning of this tenancy in February 2023, or at any time prior to filing this application in July 2023.

I find that the landlord is not required to provide free Wi-Fi for the tenant at the rental unit, as services or facilities required by law. The tenant did not provide a signed, written tenancy agreement indicating that free Wi-Fi is included in her monthly rent at the rental unit. The tenant did not provide a written tenancy agreement signed by both parties. The tenant agreed that the landlord did not sign the written tenancy agreement that she provided as evidence for this hearing.

The tenant did not provide sufficient written documentation, including any contracts or other written or signed documents, indicating that she is entitled to free Wi-Fi as part of her monthly rent at the rental unit.

Therefore, the tenant's application for an order requiring the landlord to provide services or facilities required by law, and for an order requiring the landlord to comply with the *Act*, *Regulation*, or tenancy agreement, is dismissed without leave to reapply.

**Is the tenant entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit?**

The tenant stated that she wanted 24 hours' notice, prior to the landlord entering the garage at the property. She agreed that the garage is a common area, and she is not entitled to exclusive possession of it. She confirmed that her rental unit is a two-bedroom suite, and the landlord did not enter her rental unit, without prior written notice. Section 29 of the *Act* states the following in part, which I informed the tenant about during this hearing (my emphasis added):

29(1) A landlord must not enter a **rental unit** that is subject to a tenancy agreement for any purpose unless one of the following applies:

Section 1 of the *Act* defines a rental unit (my emphasis added):

**"rental unit" means living accommodation rented** or intended to be rented to a tenant;

Both parties agreed that the garage is not part of the tenant's rental unit, since it is a common area. Both parties agreed that the tenant is not entitled to exclusive possession of the garage, since it is not part of the rental unit. Both parties agreed that the landlord has not entered the tenant's rental unit, which is a two-bedroom suite, without providing proper notice to the tenant.

I find that the landlord is not required to provide written notice to the tenant prior to entering the garage at the property because it is not part of the tenant's rental unit, since it is a common area, for which the tenant does not have a right of exclusive possession.

Accordingly, the tenant's application for an order to suspend or set conditions on the landlord's right to enter the rental unit, is dismissed without leave to reapply.

### **Is the tenant entitled to recover the filing fee paid for her application?**

As the tenant was mainly unsuccessful in her application, except for the 1 claim that was settled by both parties, I find that she is not entitled to recover the \$100.00 filing fee from the landlord. This claim is also dismissed without leave to reapply

### **Conclusion**

I order both parties to comply with the above settlement terms, regarding the tenant's application for authorization to change the locks to the rental unit.

The tenant's application, for a monetary order of \$1,550.00 for compensation for damage or loss under the *Act*, *Regulation*, or tenancy agreement, an order regarding a disputed additional rent increase of \$400.00, and an order allowing the tenant to reduce rent of \$300.00 for repairs, services, or facilities agreed upon but not provided, is severed and dismissed with leave to reapply.

The remainder of the tenant's application is dismissed without leave to reapply.

The landlord's application to recover the \$100.00 filing fee is dismissed without leave to reapply. The remainder of the landlord's application 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: November 8, 2023

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Residential Tenancy Branch