



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Dispute Codes MNDC, FF

Introduction

On January 29, 2025, the Tenant filed an application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act) for:

- compensation for a monetary loss or other money owed
- recovery of the filing fee

The Tenant requested an alternate hearing format and was granted approval for a hearing by written submissions only in a Decision of February 28, 2025, by an adjudicator with the Residential Tenancy Branch (RTB).

My Interim Decision was made on March 4, 2025, which should be read in conjunction with this Decision and is incorporated by reference.

In the Interim Decision, I ordered the Tenant to serve the Landlord with the Format of Hearing Decision, attached details, their application for dispute resolution and all evidence filed with the RTB in support of their application. The Tenant submitted proof that they served the Landlord with the required documents on March 6, 2025.

Preliminary matters

In my Interim Decision, I ordered the Tenant not to give any evidence or written submissions not already filed, which was specifically listed within the Interim Decision. Despite this order, on March 21, 2025, the Tenant uploaded an additional 40+ pages of evidence with the RTB, which contained a breakdown of an amended monetary claim in the amount of \$34,940.32. I note that the Tenant did not provide a detailed breakdown of their original monetary claim of \$34,500 in the application.

The Tenant was advised in the Interim Decision that if they filed additional evidence, it will not be considered. For this reason, I have excluded the additional evidence uploaded on March 21, 2025, which included the only detailed calculation of their monetary claim.

Issues to be Decided

Has the Tenant's application been filed within the required time limit allowed under the Act?

If so, is the Tenant entitled to compensation for a monetary loss or other money owed and recovery of the filing fee?

Background and Evidence

I have reviewed all allowed evidence and submissions and will refer only to what I find relevant for my decision.

The tenancy began on October 1, 2021, according to the Tenant's application.

In their application, the Tenant stated that the tenancy ended on January 29, 2023, and they filed their application on January 29, 2025. The Landlord asserts in their written submissions that the tenancy ended on January 23, 2023, in accordance with an order by another arbitrator in a Decision issued on that date. The file number for that Decision is listed on the cover page of this Decision.

The Landlord referred to the January 23, 2023, Decision of another arbitrator. The dispute resolution was on the Tenant's application seeking cancellation of a One Month Notice to End Tenancy for Cause, which was dated August 26, 2022. The Decision of the other arbitrator noted that the hearing on the Tenant's application began on January 3, 2023, and concluded on January 20, 2023.

In the January 23, 2023, Decision, the other arbitrator determined that the tenancy ended on August 31, 2022, the effective date of the One Month Notice. The arbitrator further determined that the Tenant and anyone living on the premises were required to vacate by August 31, 2022, and since that had not happened at the time of the final hearing on January 20, 2023, the arbitrator granted the Landlord a two (2) day order of possession of the rental unit.

Analysis

Based on the relevant written evidence and submissions, and on a balance of probabilities, meaning more likely than not, I find as follows.

Was the Tenant's application filed within the statutory time allowed?

For the following reasons, I find the Tenant did not file their application within the statutory time.

Reason 1

Under section 60 of the Act, an application for dispute resolution **must** be made **within** 2 years of the date that the tenancy to which the matter relates ends. If I accept the Tenant's version of when the tenancy ended, January 29, 2023, I find that the latest either party here could file an application for dispute resolution relating to this tenancy was *January 28, 2025*. (emphasis added)

I find this requirement is distinguished from a general limitation period under the *Limitation Act*, which states in relevant part that "...a claim must not be commenced more than 2 years **after** the day on which the claim is discovered". (emphasis added)

For further clarification, **within** 2 years in this case, can be explained as follows: the first year on a **calendar** year basis would run from January 29, 2023, when the Tenant said the tenancy ended, until January 28, 2024. The second year would then start on January 29, 2024, and run until January 28, 2025. (emphasis added)

Therefore, I find that the "**within** 2 years of the date that the tenancy to which the matter relates ends" provision of section 60(1) of the Act requires that the application in this case be filed no later than January 28, 2025, as the start date commenced on the date of the tenancy ending January 29, 2023. I find a common meaning of the word "within" is "before the end of".

I find it important to note that other sections of the Residential Tenancy Act use the word "**after**" in calculating timelines, such as providing that a tenant may dispute a notice to end a tenancy within a designated number of days **after** receipt of a notice.

For the reasons above, I find the Tenant's application filed on January 29, 2025, was outside the statutory time limit when it was filed and is barred from being heard.

I therefore dismiss the Tenant's application, without leave to reapply.

Reason 2

With that being said, however, I do not accept, that the tenancy ended on January 29, 2023 as claimed by the Tenant, or January 23, 2023 as claimed by the Landlord. In the previous dispute noted on the cover page, the arbitrator found that the Landlord submitted sufficient evidence to support one of the reasons listed on the One Month Notice. As a result, the arbitrator in their Decision determined that the tenancy ended on August 31, 2022, pursuant to the One Month Notice that was at issue in that dispute and the Tenant was required to vacate by that date. What that means is the Tenant was overholding in the rental unit beyond the date the tenancy ended on August 31, 2022. Therefore, I find that the matter of when the tenancy ended was already decided upon in a previous dispute, and I am unable to re-decide when the tenancy ended.

Considering the previous Decision, the Tenant had until August 30, 2024, to file this application under section 60 of the Act. As they did not file their application until January 29, 2025, as previously noted, the Tenant is time barred from bringing this dispute under the Act.

Did the Tenant's application comply with the Act and Rules?

In *Ndachena v Nguyen*, 2018 BCSC 1468 at para 59, the Court acknowledged that the Residential Tenancy Branch Rules of Procedure contemplate a high level of procedural fairness, as follows: "The RTB Rules govern dispute resolution proceedings. They contemplate a high level of procedural fairness. Any person dealing with the RTB would have a reasonable expectation that the RTB Rules would be complied with."

I find the Tenant's application must be refused under section 59(5)(c) of the Act as I find the Tenant's application did not have sufficient particulars of their dispute, which is required by section 59(2)(b).

Under RTB Rule 2.5, the applicant **must** give a detailed calculation of any monetary claim and copies of all other digital and documentary evidence to be relied on in the proceeding with their application. (emphasis added)

In this case, the Tenant originally claimed \$34,500 without a breakdown or detailed calculation being included with their application. After the Interim Decision was made in which the Tenant was ordered not to file additional evidence, the Tenant filed a detailed calculation which increased their claim to \$34,940.32 and other evidence. This increased claim and detailed calculation filed on March 21, 2025, violated the terms of the Interim Decision and it was not considered.

I find that proceeding with the monetary claim would be prejudicial and procedurally unfair to the Respondent, as the absence of particulars that sets out how the Tenant arrived at the amount being claimed makes it difficult, if not impossible, for the Respondent to adequately prepare a response to the claim.

Both parties have the right to a fair proceeding and the Respondent is entitled to know the full particulars and details of the claims made against them at the time the applicant submits their application to prepare a response.

For the above reasons, I dismiss the Tenant's application in full, without leave to reapply.

What this means for the Tenant is that they **must not make any further applications** with the RTB against this Landlord relating to this tenancy. (emphasis added)

If the Tenant fails to comply with this direction, the Landlord may use this Decision for a response to the claim or to notify the RTB administrative staff.

Conclusion

The Tenant's application is dismissed in its entirety, 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: April 10, 2025

Residential Tenancy Branch