



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation or tenancy agreement, under section 67, and
- a monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement, under section 51(2).

Tenant KT (the applicant) and CF attended the hearing. The applicant was assisted by advocate JM. CF was assisted by counsel PS. Witness MF also attended. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

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."

The applicant affirmed the rental unit belongs to CF and CF provided receipts under Pisco Properties (the respondent). The applicant dealt with CF for the tenancy issues.

CF stated he has no relation with the respondent, and he does not know why Pisco Properties was named respondent in this application. CF's counsel testified that the notice of hearing is not valid for CF because it does not name him a party and CF did not serve response evidence because he is not a party. CF does not consent to an amendment to be named respondent.

The applicant's advocate said the notice of hearing names CF as the representative for Pisco Properties.

The applicant did not submit evidence to prove that CF provided receipts or any document as the representative of Pisco Properties.

Section 1 of the Act defines landlord as:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
  - (i) permits occupation of the rental unit under a tenancy agreement, or
  - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
  - (i) is entitled to possession of the rental unit, and
  - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

Based on the applicant's testimony, I find the respondent is not the landlord, per section 1 of the Act.

Residential Tenancy Branch Policy Guideline 43 states:

Parties who are named as applicant(s) and respondent(s) on an Application for Dispute Resolution must be correctly named.

If any party is not correctly named, the director's delegate ("the director") may dismiss the matter with or without leave to reapply. Any orders issued through the dispute resolution process against an incorrectly named party may not be enforceable.

[...]

It is up to the applicant to ensure that a party is properly named to ensure an enforceable order. Where the business is not properly named, for example Garden Apartments (only), the director may dismiss the application with leave to reapply unless the other party is present and consents to an amendment, or the director may issue the order using the name set out in the application.

Residential Tenancy Branch Policy Guideline 12 states:

The purpose of serving documents under the Legislation is to notify the parties named in the dispute of matters relating to the Legislation, the tenancy agreement, a dispute resolution proceeding, or a review. Another purpose of providing the documents is to allow the other party to prepare their response for the hearing and gather documents they may need to serve and submit as evidence in support of their position.

I find this hearing cannot proceed because the applicant did not name the landlord as respondent.

Rule of Procedure 4.7 states:

A respondent may raise an objection at the hearing to an Amendment to an Application for Dispute Resolution on the ground that the respondent has not had sufficient time to respond to the amended application or to submit evidence in reply.

The arbitrator will consider such objections and determine if the amendment would prejudice the other party or result in a breach of the principles of natural justice. The arbitrator may hear the application as amended, dismiss the application with or without leave to reapply, or adjourn the hearing to allow the respondent an opportunity to respond.

Residential Tenancy Branch Policy Guideline 23 states:

In addition, if any party is not correctly named, the arbitrator may dismiss the matter with or without leave to reapply. If the arbitrator does not dismiss the matter and issues an order, it might not be enforceable.

I find it is not fair to amend the application to name CF as respondent because CF did not serve response evidence, as he was not named respondent.

### Conclusion

I dismiss the application 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: January 14, 2022