



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPE, MNDCL, FFL

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an Order of Possession for end of employment, pursuant to sections 47 and 55;
- a Monetary Order for damage or compensation, pursuant to section 67; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution 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."

Both parties confirmed their email addresses for service of this Decision.

### Preliminary Issue- Naming of Parties

The tenant testified that in a previous application for dispute resolution the landlord's brother was named as the landlord. The file number for the previous application is located on the cover page of this decision. The landlord testified that the subject rental property is owned by a family corporation whose shares are owned by his mother-in-

law. The landlord testified that he is the agent for the family corporation. The landlord testified that he deals with tenancy related matters on behalf of the family corporation.

Section 1 of the *Act* defines landlord as:

**"landlord"**, in relation to a rental unit, includes any of the following:

- (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;

I accept the landlord's testimony that he is the agent of the owner of the subject rental property and permits occupation of the rental unit. I therefore find that the landlord meets the definition of landlord set out in section 1(a) of the *Act*.

#### Preliminary Issue- Tenancy Ended

At the outset of the hearing both parties agreed that the tenant vacated the rental unit. The landlord's application for an Order of Possession is moot since the tenancy has ended and the tenant left the rental unit.

Section 62(4)(b) of the *Act* states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the *Act*. I exercise my authority under section 62(4)(b) of the *Act* to dismiss the landlord's application for an Order of Possession with leave to reapply.

### Preliminary Issue- Service

Both parties agree that the landlord served the tenant with the landlord's application for dispute resolution and evidence via registered mail. I find that the above mailing was completed in accordance with section 89 of the *Act*.

The tenant did not submit evidence for consideration.

### Issues to be Decided

1. Is the landlord entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72.

### Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on June 24, 2017 and ended in August of 2022. The rental accommodation was provided to the tenant as part of her employment compensation.

The landlord is seeking to recover the cost of electricity and gas from the start of the tenancy to June 2022 (when the application was filed).

The landlord entered into evidence a tenancy agreement signed by the landlord, but not the tenant. The tenancy agreement states that electricity is not included in the rent, gas is not mentioned.

The tenant testified that the tenancy agreement outlines what the parties initially discussed, but she did not sign it because the landlord refused to sign it. The tenant testified that after the above discussions, the landlord's brother told her than she did not

have to pay for gas and electricity. The landlord testified that his brother never said that to the tenant.

Both parties agree that the tenant did not pay for electricity and gas for the duration of this tenancy and that during the tenancy the landlord never asked the tenant to pay for electricity or gas. The landlord testified that the tenant was not asked to pay for electricity or gas because he and his brothers were scared of the tenant.

The landlord testified that he is seeking \$6,073.56 for electricity consumed during the tenancy and \$771.53 in gas consumed during the tenancy.

Both parties agree that the landlord ended the tenant's employment effective April 30, 2022 via a letter dated March 24, 2022. Both parties agree that the tenant was served with a One Month Notice to End Tenancy for End of Employment (the "Notice") dated March 23, 2022. The tenant testified that she filed to dispute the Notice because she had no-where to go. Both parties agree that in a Residential Tenancy Branch Decision dated July 18, 2022, the Notice was cancelled because the landlord failed to fill out the details of cause section of the Notice which the arbitrator found was a fatal flaw of the Notice.

The landlord testified that the tenant did not pay any compensation to the landlord for staying at the subject rental property after her employment ended. The tenant testified that pursuant to the *Act*, she was entitled to dispute the Notice and was not required to vacate the subject rental property before she did as the eviction was put on hold because she disputed the Notice, and the Notice was dismissed.

The landlord testified that he is seeking to recover what the subject rental property could have fetched on the market for rent. The landlord entered into evidence five advertisements for similar properties. The average rent of the five properties is \$1,810.00 per month. The landlord testified that he is seeking \$1,810.00 per month from May to July 2022 totalling \$5,430.00.

The landlord testified that after the tenant moved out the employee who replaced her position moved into the subject rental property on October 1, 2022. The landlord testified that the new employee receives the subject rental property as part of their employment compensation.

The landlord testified that because the tenant did not move out of the subject rental property at the end of April, 2022, when her employment ended, the landlord had to increase the pay of the new employee by 50 cents per hour as compensation for not being able to move into the subject rental property right away. The landlord testified that the increased pay is permanent and was not reduced when the new employee moved in. The landlord did not provide documentary evidence of the new employee's rate of pay or evidence of the rate of pay paid to the tenant. The landlord did not provide any calculation regarding how much extra the landlord will have to pay the new employee because of the tenant's delay in moving out.

### Analysis

All tenancy agreements between a landlord and a tenant with respect to a rental unit and residential property are subject to the *Act*, unless specifically exempted. The definition of "tenancy agreement" in section 1 of the *Act* includes tenancy agreements entered into orally, in writing, and by way of implied or express terms. I find that as both parties did not sign the tenancy agreement, the tenancy agreement is not binding and that the parties entered into a verbal tenancy agreement.

I was provided opposing testimony regarding whether or not electricity and gas were included in the tenant's employment compensation. However, it is undisputed that the landlord provided the tenant with electricity and gas for over five years without asking the tenant to pay for either utility. Given the significant duration of the services being provided, I find that on a balance of probabilities, there was at least an implied term of tenancy that gas and electricity were included. The landlord's application to recover the costs for same are therefore dismissed without leave to reapply.

Section 67 of the *Act* states:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 (PG 16) states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be

successful in a monetary claim, the applicant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

Pursuant to PG 16 and section 67 of the *Act*, if the landlord proves that the tenant breached the *Act*, then the landlord is entitled to the proven loss that results from that breach. Based on the testimony of the landlord, I find that had the tenant moved out of the subject rental property at the end of April 2022, the landlord would not have rented out the property for rental compensation but would have provided the subject rental property to the employee who replaced the tenant, as part of that employee's employment compensation.

I find that since the landlord would not have rented the subject rental property out on the market if the tenant moved out at the end of April 2022, the landlord is not entitled to the potential rental income of that property if it were on the market. The landlord is only entitled to damages actually suffered as a result of a breach of the *Act*, tenancy agreement or Regulation, not hypothetical damages which were never actually going to be incurred.

In this scenario, the loss suffered by the landlord is the alleged additional 50 cents per hour paid to the new employee as a result of the new employee not being able to move

in when they started working. I find that the landlord has not proved the value of that loss as no calculations for same were entered into evidence and no evidence to establish a higher hourly wage because of the late move in were provided. I dismiss the landlord's application for loss of rental income for failure to prove the value of the loss actually suffered.

As the landlord was not successful in this application for dispute resolution, I find that the landlord is not entitled to recover the filing fee for this application for dispute resolution, pursuant to section 72 of the *Act*.

### Conclusion

The landlord's application for dispute resolution 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: November 21, 2022

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Residential Tenancy Branch