



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MNDC, OLC, ERP, RP, LRE, RR, FF, O

### Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking to cancel a notice to end tenancy and several orders to have the landlord comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement.

The hearing was originally convened on April 19, 2013 via teleconference and was attended by the female tenant and the landlord. The hearing was adjourned and reconvened on May 22, 2013 at which time both tenants and the landlord attended.

At the outset of the original hearing the landlord testified that he had not received any evidence from the tenants. The female tenant testified that the evidence had been served by regular mail and as such it was not trackable. I granted an adjournment.

Prior to ending the first hearing the parties agreed:

1. The landlord would meet with male tenant on Sunday, April 21, 2013 at 7:00 p.m. to have kitchen cabinet door replaced;
2. The tenants would serve landlord with their evidence at the same time the male tenant met with the landlord to replace the kitchen cabinet on Sunday April 21, 2013 at 7:00 p.m..

The parties had agreed to the landlord and the male tenant interacting because the female tenant did not feel comfortable dealing with the landlord.

The female tenant had identified they intended to be away from the rental unit for the period between May 1, 2013 and May 12, 2013 and as part of their Application was to suspend or set conditions on the landlord's right to enter the rental unit the tenant asked to have the landlord not enter the rental unit during this time period.

I ordered landlord to not issue a notice of intent to enter or enter the rental unit during the period of May 1 to May 12 as tenants would be away at that time, unless an emergency existed. I did not order the landlord was not allowed to issue any other time of notices to the tenants.

At the reconvened hearing the landlord testified that he had not received the tenant's evidence still. The tenants testified that on April 21, 2013, which was one of the dates the tenants were required to make a pre-payment of rent, according to the tenancy agreement, the female tenant attempted to pay the landlord rent and that he refused to accept it. The tenants submit that the police were called.

The tenants acknowledge that despite this altercation the landlord did attend the rental property at 7:00 p.m. on April 21, 2013 as per the agreement from the previous hearing to replace the kitchen cabinet door.

The male tenant testified that despite the landlord asking him to discuss some things he did not and he did not provide the landlord with their evidence on April 21, 2013. The male tenant testified that he wasn't going to deal with the landlord because his family was sitting down to dinner and he didn't want the landlord to speak around the children in a similar manner to what he has done in the past.

The male tenant stated that he was not aware that he was supposed to have provided the evidence to the landlord at that time because he had not been in the original hearing. I noted that the female tenant had been in the hearing and I had expected her to relay the agreement to him. The female tenant testified that she was unaware of this agreement.

The tenants testified that they had mailed the landlord their evidence to the landlord on May 1, 2013 by registered mail.

The tenants testified that they did not mail it until May 1, 2013 because they had to make additional copies of the evidence. However, the tenants could not explain adequately why it took them until 10 days after the date they were suppose to provide the landlord with their evidence.

During the reconvened hearing the parties granted me permission to check the Canada Post tracking information to determine if the evidence had been mailed. Tracking information indicated that the landlord had been given two notices of its arrival and that it was being held for him to pick up. The landlord testified that he had not received any notifications from Canada Post.

I adjourned the hearing at this point to have the landlord collect the registered mail and to provide a written outline of what the package contained, no later than the end of business on May 23, 2013.

The landlord provided confirmation of receipt of the tenants' package that had been mailed to a previous box number for the landlord, despite the tenants having the current box number for the landlord on their Application for Dispute Resolution. The landlord provided a copy of the envelope showing the wrong address used by the tenants.

#### Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities; to a monetary order for compensation for damage or loss; to an order to have the landlord complete repairs and emergency repairs; for an order; to an order to restrict the landlord's access to the rental unit; to a rent reduction; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 31, 32, 33, 46, 67, 70, and 72 of the *Act*.

#### Analysis

Despite the tenants' testimony that the female tenant and the landlord had another altercation on the very day that the evidence was to be served by the male tenant to the landlord, it had been agreed by both parties that it would be the male tenant who would deal with the landlord for both the kitchen door and the evidence because the female tenant did not feel comfortable dealing with the landlord.

I find it perplexing as to why, then, the female tenant was the one who would have gone to pay the landlord rent earlier the same day that the landlord was scheduled to come by and deal with the male tenant to fix the cabinet and collect the tenants' evidence package.

I find it unlikely that the female tenant did not remember the agreement for the service of evidence because at the original hearing the whole reason for adjournment was so the tenants could serve the landlord their evidence; to accommodate their absence due to vacation; we had discussed the requirements several times during that first hearing.

I also find that since the tenants had used the landlord's correct mailing/service address on their Application for Dispute Resolution and that they used his old mailing address on their evidence package the tenants have failed to served the landlord with any of their evidence regarding their Application and claim, for a second time.

Conclusion

As I have found the tenants have failed to serve the landlord with their evidence twice, I dismiss their Application in its entirety, 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: April 19, 2013

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Residential Tenancy Branch

