



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

DRI, RP, RR, FF

### Introduction

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

- an order to the landlords to make repairs to the rental unit pursuant to section 32;
- an order regarding a disputed additional rent increase pursuant to section 43;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

The landlords and tenants were represented by their respective agents. The tenants' agent was the sister-in-law of the tenant TR. The agents were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenants' agent testified that the tenants served the landlords with the dispute resolution package (including all evidence) on 22 December 2014 by registered mail. The landlords' agent confirmed receipt of this package, but stated that the package did not include any evidence. After review of the contents of the tenants' evidence it appeared that the landlord had submitted copies of all of these documents with their evidence so there was no issue with my consideration of the tenants' documents. On the basis of this evidence, I am satisfied that the landlords were deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

The landlords' agent testified that he served the evidence to the tenants by registered mail. The landlords' agent provided me with Canada Post tracking numbers that set out the same. The landlords' agent testified that the registered mailings were not picked up from the post office. On the basis of this evidence, I am satisfied that the tenants were deemed served with the evidence pursuant to sections 88 and 90 of the Act.

Preliminary Issue – Tenants' Adjournment Request

At the commencement of the hearing, the tenants' agent requested an adjournment as the tenants were unable to appear because they were in Nova Scotia.

The tenants' agent stated that she was with the tenant TR when she applied for this dispute resolution. When the tenant TR was told that this hearing was scheduled for this date, the tenant TR told the Residential Tenancy Branch staff member that neither she nor the tenant RR could appear as they were scheduled to be out of the province on the hearing day. The staff member told the tenant TR that she could make arrangements for someone else to attend or call in by telephone from Nova Scotia. The tenants elected to have the tenants' agent appear.

The landlords' agent submitted that it would be prejudicial to adjourn the hearing as the landlords wanted to have finality on these issues. The landlords' agent submitted that the tenants could have requested different dates and that the tenants have not provided the Residential Tenancy Branch of landlords with any relevant evidence in relation to their dispute.

*Residential Tenancy Branch Rules of Procedure* (the Rules), rule 6.1 sets out a procedure for rescheduling hearings with the consent of both parties. I was not provided with any evidence that the tenants sought the consent of the landlords prior to this hearing.

Rule 6.2 of the Rules sets out two alternate procedures for receiving an adjournment where consent cannot be obtained. In one of these procedures, an agent represents the party at the dispute resolution hearing to make a request to reschedule the hearing.

The Rules, rule 6.4 sets out the criteria for granting an adjournment:

Without restricting the authority of the arbitrator to consider other factors, the arbitrator must apply the following criteria when considering a party's request for an adjournment of the dispute resolution proceeding:

- (a) the oral or written submissions of the parties;
- (b) whether the purpose for which the adjournment is sought will contribute to the objectives set out in Rule 1;
- (c) whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding;
- (d) the degree to which the need for the adjournment arises out the intentional actions or neglect of the party seeking the adjournment; and
- (e) the possible prejudice to each party.

I informed the parties at the hearing that I was reserving my decision on the tenants' application for adjournment. After consideration, I decline to grant the adjournment.

Although I considered all the criteria in 6.4, I declined to adjourn the hearing as the tenants had ample notice of the hearing to prepare their agent to represent them at the hearing, I was not provided with any evidence why the tenants were unable to call into the hearing from Nova

Scotia, the tenants' agent did not provide me with any evidence that the tenants sought consent to reschedule this hearing in advance of this date despite knowing weeks in advance that they would be unable to attend, it would unfairly prejudice the landlords to reschedule the hearing, and it would not add to the objectives in rule 1 (in particular, fairness or efficiency) to delay the hearing of this application on its merits.

#### Issue(s) to be Decided

Are the tenants entitled to an order that the rent increase is in excess of the amount allowable under the Act. Are the tenants entitled to an order that the landlords make repairs to the rental unit? Are the tenants entitled to a reduction in rent for a reduction in the value of the tenancy agreement? Are the tenants entitled to recover the filing fee for this application from the landlords?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenants' claim and my findings around it are set out below.

This tenancy began 15 October 2014. Monthly rent of \$2,500.00 was due on the fifteenth of the month.

The tenants' agent testified that two of the exterior doors to the rental unit were loose on their hinges. I was not provided with any written notice from the tenants to the landlords about the requested repairs. The landlords' testified that the tenants have never made any complaints about any loose doors and that the first time he heard this complaint was in the details of the tenants' application. The landlords' agent testified that he tried to speak with the tenants to inspect the property to conduct the repairs, but was unable to reach the tenants.

The tenants' agent testified that she did not know what rent abatement the tenants were seeking in respect of the wobbly doors.

The tenants' agent testified that she did not have any evidence with respect to the disputed rent increase. The landlords' agent testified that there has never been a rent increase.

#### Analysis

The tenants have failed to provide me with sufficient and relevant evidence to support their claim in relation to the disputed rent increase. I find that there was, in fact, no rent increase. I dismiss this portion of the tenants' claim without leave to reapply.

Subsection 32(1) of the Act requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by

law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by the tenant. It is the tenant's onus to show that the landlord has failed to meet the requirements of subsection 32(1).

I have received testimony from the tenants' agent that two of the exterior doors are loose on their hinges. I have not been provided with any photographic or documentary evidence to show me if the alleged defect caused the doors to fall within the ambit of subsection 32(1) and requires the landlords to make repairs. I find that the tenants have failed to meet their onus to show that the repairs are required. I dismiss this portion of the tenants' claim without leave to reapply.

Paragraph 65(1)(f) of the Act allows me to issue an order to reduce past or future rent by an amount equivalent to a reduction in the value of a tenancy agreement. The only defect with the rental unit that the tenants have alleged is with the two exterior doors. As the tenants have failed to show that the landlords are in breach of the Act for failure to correct this defect, I decline to reduce past or future rent. Further, the tenants or their agent have not specified by what amount, if any, the tenants' rent should be reduced. I dismiss this portion of the tenants' claim without leave to reapply.

As the tenants were unsuccessful in this application, I dismiss their application to recover their filing fee from the landlords without leave to reapply.

### Conclusion

The tenants' claim is dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: January 19, 2015

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Residential Tenancy Branch

