



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes CNL, MNDC, OLC

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) and an Amendment to an Application for Dispute Resolution (the “Amendment”) that was filed by the Tenants under the *Residential Tenancy Act* (the “Act”), seeking cancellation of a Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Two Month Notice”), an order for the Landlord to comply with the *Act*, regulation, or tenancy agreement, and a monetary order for money owed or compensation for damage or loss under the *Act*, regulation, or tenancy agreement.

The hearing was convened by telephone conference call and was attended by the Tenants, the Tenants’ advocate (the “Advocate”), the Tenants’ assistant (the “Assistant”), the Landlord, who is the property owner, and the agent for the Landlord (the “Agent”). All parties provided affirmed testimony. The Assistant did not provide any testimony or evidence in the hearing. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”). However, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of the decision will be e-mailed to them at the e-mail addresses provided in the hearing.

Preliminary Matters

**Preliminary Matter #1**

At the outset of the hearing the Advocate identified that the Tenants have now been relocated to another rental unit. As a result, the Application seeking cancellation of the Two Month Notice was withdrawn.

**Preliminary Matter #2**

The Rules of Procedure state that the respondent must be served with a copy of the Application and Notice of Hearing. In the hearing the Landlord and Agent testified that although they have received the Amendment filed by the Applicants, they have not received the original Application, evidence, or Notice of Hearing.

The Advocate testified that she mailed the Application, Notice of Hearing, and the evidence to the Landlord by registered mail on February 2, 2018, at the address for service for the Landlord provided on the Two Month Notice. The Advocate provided a copy of the registered mail address label containing the same address for the Landlord noted on the Two Month Notice as well as a registered mail tracking number.

In the hearing the Landlord stated that this is not the correct address for service for the Landlord and acknowledged that this was an error on the part of the previous property manager. However, the Landlord testified that in any event, neither he nor the Agent received the above noted documents from the previous manager.

Section 88 and 89 of the *Act* state that documents may be mailed to the Landlord at the address at which the person carries on business as a landlord. Although the Landlord testified that the address for the Landlord on the Two Month Notice is incorrect, there is no evidence before me that the Tenants were aware at the time of serving the Landlord that this address was incorrect and I therefore find it reasonable for the Tenants to have used this address for serving documents related to the Two Month Notice on the Landlord.

Section 90 of the *Act* states that a document given or served in accordance with section 88 or 89 of the *Act*, unless earlier received, is deemed to be received five days after it is sent by mail. Although the Landlord and Agent testified that the previous manager never provided them with the above noted documents, as stated above, I am satisfied that these documents were sent by registered mail to the Landlord's address shown on the Two Month Notice. Pursuant to section 90 of the *Act*, I therefore find that the Landlord is deemed to have received these documents, regardless of whether the previous property manager forwarded them to the new Agent or the Landlord, on February 7, 2018, five days after they were sent by registered mail. Based on the above, I have accepted the Tenants evidence for consideration in this matter.

### **Preliminary Matter #3**

The Landlord and Agent testified that they only recently became aware of the Tenant's dispute due to the previous manager's failure to provide them with a copy of the Application, Notice of hearing and documentary evidence. As a result, they stated that they were unable to serve their evidence on the Tenants or the Branch within the timeframe required by the Rules of Procedure. The Agent testified that she sent the Landlord's evidence to the Advocate by e-mail and registered mail on March 26, 2018, and the Advocate confirmed receipt on March 28, 2018. The Agent also testified that the evidence was personally served on the Tenant D.M. on March 29, 2018, and D.M. confirmed receipt on this date. Records at the Residential Tenancy Branch (the "Branch") indicate that evidence was sent to the Branch on March 26, 2018, however, at the time of the hearing, a portion of the evidence was not yet processed or available for my viewing.

The Landlord and Agent therefore requested that the hearing be adjourned to allow them to time to receive and consider the Tenant's evidence and to allow the Tenants time to consider the late evidence served on them by the Landlord. The Tenant's objected to the request for an adjournment and requested that the hearing proceed as scheduled.

Section 7.8 of the Rules of Procedure states that at any time after the dispute resolution hearing begins, the arbitrator may adjourn the hearing and that a party or their agent may request an adjournment. Section 7.8 also outlines criteria that may be considered in assessing whether or not to grant an adjournment such as the likelihood of the adjournment resulting in resolution, the degree to which the need for adjournment arises out of intentional actions or neglect of the party seeking the adjournment, whether the adjournment is required to provide a fair opportunity for a party to be heard, and the possible prejudice to each party.

As stated above, I find that the Landlord was deemed served with the Tenants' Application, the Notice of Hearing, and evidence on February 7, 2018. The Landlord and Agent also confirmed in the hearing that they received the Amendment on or about March 14, 2018. As a result, I find that the Landlord had sufficient time to consider and respond to the Tenants' Application and evidence within the timeframe provided in section 3.15 of the Rules of Procedure. Further to this I find that the Landlord's claimed inability to respond to this matter in a timely manner is the direct result of the previous manager's negligence in performing his duties. As a result, I find that the Landlord and his Agents hold a high degree of responsibility for the reason for which they are seeking an adjournment. Further to this, much of the evidence reported to have been submitted by the Landlords was also submitted by the Tenants and is therefore already before me for consideration. As a result, I find that there is insufficient evidence to establish that an adjournment would result in resolution or a fair opportunity for the Landlord to be heard. Based on the above, the request for adjournment was denied and the hearing proceeded as scheduled.

### **Settlement**

The opportunity for settlement was discussed with the parties during the hearing. The parties were advised on several occasions during the hearing that there is no obligation to resolve the dispute through settlement, but that pursuant to section 63 of the *Act*, I could assist the parties to reach an agreement, which would be documented in my Decision.

During the hearing, the parties mutually agreed to settle this matter as follows:

1. The Tenants agree to sign the tenancy agreement provided by the Landlord, effective as of April 1, 2018, no later than 11:59 P.M. on Sunday April 8, 2018.
2. The Landlord agrees to use the standard tenancy agreement provided by the Residential Tenancy Branch (the RTB-1).
3. The Landlord agrees to provide the Tenants with one free month of rent, to be used for the month of May, 2018.
4. The Landlord agrees not to seek any costs for cleaning or damage to the previous rental unit.
5. The Tenants withdraw their Application in full as part of this mutually agreed settlement.
6. The parties agree that this agreement constitutes full and final settlement of all matters relating to this tenancy up to and including April 3, 2018.

This settlement agreement was reached in accordance with section 63 of the *Act*.

### Conclusion

I order the parties to comply with the terms of their mutually settled agreement described above.

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 3, 2018

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Residential Tenancy Branch