



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, RP

### Introduction

This decision pertains to the Tenants' application for dispute resolution under the *Residential Tenancy Act* (the "Act"). The Tenants seek the following relief:

1. an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property; and,
2. an order for regular repairs, namely, that the Landlord repair a broken toilet seat and a broken stove burner element.

The Tenant (J.B.) attended the hearing before me and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The Landlord did not attend.

The Tenant testified that they served the Notice of Dispute Resolution Proceeding package (the "package") on the Landlord by leaving a copy of the package with the Landlord's agent on April 17, 2018. I am satisfied that the Tenants served the Landlord with the package pursuant to section 89 (1) (b) of the Act.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application is considered in my decision.

### Issues to be Decided

1. Are the Tenants entitled to an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property?
2. Are the Tenants entitled to an order for regular repairs, namely, that the Landlord repair a broken toilet seat and a broken stove burner element?

### Background and Evidence

The Tenant testified that they were served with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") on March 31, 2018. The Notice indicated that the Landlord or the Landlord's close family member intended to occupy the rental unit. The Tenant submitted into evidence a copy of the Notice.

Regarding the Tenants' request for a repair order, the Tenant testified that the primary burner element on their stovetop is broken, and that the Landlord provided a non-compatible replacement element which does not fit into the stove. If the Tenant forced the replacement element into the stove it would create a hazard and "would burn the entire house down." The Landlord has refused to provide a compatible burner element.

The Tenant also testified that there is one bathroom and one toilet in the rental unit. The toilet seat is loose and slides around. The seat is attached to the toilet bowl with plastic plugs and plastic bolts which fail to provide a secure, unmoveable seat. The Tenant has visited Home Depot in search of hardware that might fix the seat, but without success. The looseness of the seat is such that a person might slide right off the seat when using the toilet. This poses a safety hazard, which is of particular concern to the Tenant given that the other Tenant (A.B.) is the J.B.'s frail, elderly mother. The Tenant testified that the toilet seat has been broken for over a year, and that the Landlord has ignored the Tenants' repeated requests for repair.

### Analysis

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.

Where a tenant applies to dispute a Two Month Notice to End Tenancy for Landlord's Use of Property, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice is based. The Landlord did not attend the hearing to prove their cause as alleged in the notice.

Therefore, the Landlord's Notice, dated March 31, 2018, is cancelled and of no force or effect. The Landlord is not entitled to an order of possession under section 55 of the Act. This tenancy will continue until it is ended in accordance with the Act.

Section 32 of the Act sets out a landlord's and tenant's obligations to repair and maintain a rental unit. Subsection 32 (1) states that "A landlord must provide and maintain residential property in a state of decoration and repair that (a) complies with the health, safety and housing standards required by law, and (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant."

Section 62 (3) of the Act permits an arbitrator to make any order necessary to give effect to the rights, obligations and prohibitions under the Act, including an order that a landlord or tenant comply with the Act, the regulations or a tenancy agreement and an order that the Act applies.

A working, non-hazardous stove is a standard, widely expected appliance provided by landlords to tenants. The Tenant testified that the primary (i.e., the "largest") element is broken, and that the Landlord has thus far refused to repair or replace it. The Landlord did provide an element, but that element does not fit into the socket and the drip pan.

Taking into consideration the unchallenged testimony of the Tenant, and applying the law to the facts, I find on a balance of probabilities that the Tenants have met the onus of proving their claim that the burner elements requires repair. As such, I order the Landlord to comply with the Act by repairing the stove in such a manner that all burner elements are in working, safe order. The repair to the stove must occur no later than Saturday, June 30, 2018.

A working, non-hazardous toilet is also a standard fixture in a rental unit. A tenant should not have to risk injury every time they sit to use the toilet. While the Tenant has made efforts to replace or repair the toilet seat, it is the Landlord's responsibility to make the bathroom facilities suitable for use by the Tenants.

Taking into consideration the unchallenged testimony of the Tenant, and applying the law to the facts, I find on a balance of probabilities that the Tenants have met the onus of proving their claim that the toilet seat requires repair. As such, I order the Landlord to comply with the Act by repairing the toilet seat to safe, working order, or, that they replace the entire toilet with a safe and working toilet. The repair to, or the replacement of, the toilet must occur no later than Saturday, June 30, 2018.

Conclusion

**The Landlord's Notice, dated March 31, 2018, is cancelled and of no force or effect. The Landlord is not entitled to an order of possession under section 55 of the Act. This tenancy will continue until it is ended in accordance with the Act.**

**I order the Landlord to comply with the Act by repairing the broken stove burner element and the broken toilet seat. The repair to the stove burner element, and the repair to the toilet seat, or replacement of the toilet, must occur no later than Saturday, June 30, 2018.**

If the Landlord fails to perform these repairs, the Tenants may make an application for an order allowing them to reduce their rent until both repairs are completed.

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

Dated: June 15, 2018

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Residential Tenancy Branch