



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, RP, LRE, FFT

### Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution filed on July 8, 2020, wherein the Tenants sought to cancel a 2 Month Notice to End Tenancy for Landlord's Use issued on June 25, 2020 (the "Notice"), an Order that the Landlords make repairs to the rental unit, an Order restricting the Landlords' right to enter the rental unit and recovery of the filing fee.

The hearing of the Tenants' Application was scheduled for 11:00 a.m. on August 13, 2020. Only the Tenants called into the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Landlords did not call into this hearing, although I left the teleconference hearing connection open until 11:32 a.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenants and I were the only ones who had called into this teleconference.

As the Landlords did not call in, I considered service of the Tenants' hearing package. The Tenant, P.B., testified that they served the Landlords with the Notice of Hearing and the Application on July 13, 2020 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

*Residential Tenancy Policy Guideline 12—Service Provisions* provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Landlords were duly served as of July 18, 2020 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Tenants' submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Tenants and relevant to the issues and findings in this matter are described in this Decision.

#### Issues to be Decided

1. Should the Notice be cancelled?
2. Should the Landlords be ordered to make repairs to the rental unit?
3. Are the Tenants entitled to an Order restricting the Landlords' right to enter the rental unit?
4. Should the Tenants recover the filing fee paid for their Application?

#### Background and Evidence

This tenancy began October 1, 2019. The Tenants pay rent in the amount of \$2,200.00 per month and paid a \$1,100.00 security deposit.

The Landlords issued the Notice on June 25, 2020. The Tenants applied to dispute the Notice on July 8, 2020. The Landlords failed to call into the hearing and therefore failed to provide any evidence or submissions in support of the reasons for issuing the Notice.

The Tenants also sought an Order that the Landlords make repairs to the rental unit, namely to address mould issues as well as Orders to restrict the Landlords entry to the rental unit as a result of the Covid-19 pandemic.

Prior Hearings before the Residential Tenancy Branch

On March 3 and May 5, 2020 the parties appeared before the Residential Tenancy Branch on a previous Application filed by the Tenants. By Decision dated May 6, 2020, the Landlords were ordered as follows:

1. Within two weeks of the date of this decision, the landlord shall have a qualified mould specialist inspect the rental unit and perform all necessary testing to determine the air quality, locations of mould, and cause(s) of the mould.
2. Within a reasonable amount of time after inspection and testing described above, the landlord shall make the repairs in accordance with the recommendations of the qualified mould specialist.
3. Upon request by the tenant, the qualifications of the mould inspector shall be presented to the tenant.

Should the landlord fail to comply with my orders above, the tenant may make another Application for dispute Resolution and seek further remedy.

The parties attended another hearing before the Residential Tenancy Branch on July 23, 2020. By Decision dated July 28, 2020 the Landlords were found in breach of section 32(1) of the *Act* as well as previous orders by the Branch requiring them to make repairs to the rental unit. Further, the Landlords were also Ordered to provide the Tenants with a copy of the mould inspection report by no later than August 3, 2020 and to complete the recommended repairs in accordance with the recommendations of the mould specialist by no later than August 15, 2020. Also pursuant to the July 28, 2020 Decision the Landlords request for an Order restricting the Landlords' right to enter the rental unit was granted in part.

The Landlords applied for Review Consideration of the July 28, 2020 Decision, however their Application was dismissed such that the July 28, 2020 Decision and Orders were confirmed.

During the hearing before me, the Tenants confirmed that as of the date of the hearing, the Landlords had yet to provide a copy of the mould inspection report. They also stated that the Landlords had yet to complete the required repairs which were to be completed by August 15, 2020, two days after the hearing before me.

Further, the Tenants confirmed with me that they did not seek additional restrictions on the Landlords' right to enter the rental unit over and above the restrictions contained within the July 28, 2020 Decision.

### Analysis

When a tenant applies to dispute a notice to end tenancy the burden of proof shifts to the landlord as it is the landlord who bears the burden of proving the reasons for issuing the notice. As the Landlords failed to call into the hearing before me, I find they have failed to meet this burden; as such I grant the Tenants' Application to cancel the Notice. The tenancy shall continue until ended in accordance with the *Act*.

The Tenants confirmed that the relief they sought at the hearing before me with respect to an Order that the Landlords make repairs to the rental unit and restricting the Landlords' right to enter the rental unit were addressed during the previous hearings before the Residential Tenancy Branch.

Although the Landlords have not complied with the prior orders, this does not give me authority to reconsider matters which have already been decided by the Branch. The legal principle which prohibits the re-litigation of matters which have already been decided is *res judicata*. *Res judicata* is a rule in law which provides that once a final decision has been made it cannot be heard again. There are three preconditions that must be met before the principle of *res judicata* can operate:

- 1) The same question has been decided in an earlier proceeding;
- 2) The earlier decision was final; and
- 3) The parties to the earlier decision are the same in both the proceedings.

The Tenants concede that their request for a repair order and an order limiting the Landlords' right to enter the rental unit was decided in earlier proceedings before the Branch. Those decisions were final and the parties were the same. As such, I dismiss the Tenants' claim for this relief as the Landlords are already bound by the May 6, 2020 and July 28, 2020 Decisions of the Branch.

I reiterate the caution provided by my colleague, Arbitrator Akow, to the Landlords who wrote as follows:

"I believe that the Landlords may be attempting to avoid the previous repair orders from the Branch as well as their obligations under the *Act*, by seeking to end the tenancy by way of a Two month Notice. The Landlords are therefore cautioned that they cannot avoid orders from the Branch or their obligations under the *Act* and the regulation and that failure to comply with this decision and orders as well as the previous decision and orders from the Branch or any other sections of the *Act* or regulation, may result in administrative penalties of up to \$5,000.00 per day, pursuant to sections 87.3 and 87.4 of the *Act*."

Having been successful in their Application to cancel the Notice, I award the Tenants recovery of the filing fee. Pursuant to section 72 of the *Act* I authorize the Tenants to reduce their next months' rent by \$100.00.

Conclusion

The Tenants' request for an Order canceling the Notice is granted.

The Tenants' request for an Order that the Landlord make repairs to the rental unit and an Order that the Landlord be restricted from entering the rental unit are dismissed as they have already been dealt with in prior decisions of the Branch.

The Tenants' request to recover the filing fee is granted. They may reduce their next months' rent by \$100.00.

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: August 19, 2020

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Residential Tenancy Branch