



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      LAT, LRE, OLC, FFT, CNL

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on December 15, 2020 (the “Application”). The Tenants applied as follows:

- For authorization to change the locks to the rental unit
- To suspend or set conditions on the landlord's right to enter the rental unit
- For an order that the landlord comply with the Act, regulation and/or the tenancy agreement
- To dispute a Two Month Notice to End Tenancy for Landlord's Use of Property
- To recover the filing fee

The Tenant attended the hearing. Nobody attended the hearing for the Landlord.

The Tenant advised at the outset that the Tenants are no longer living at the rental unit and wish to withdraw the Application.

Rule 5.0.1 of the Rules of Procedure (the “Rules”) states:

Withdrawing an application to dispute a notice to end tenancy

Where a tenant has applied to dispute a landlord's notice to end tenancy, the applicant tenant requires the written consent of the landlord to withdraw their application.

Given rule 5.0.1 of the Rules, I told the Tenant we would proceed with preliminary matters and then address the request to withdraw the Application. I explained the

hearing process to the Tenant who did not have questions when asked. The Tenant provided affirmed testimony.

The Tenants submitted evidence prior to the hearing. The Landlord did not submit evidence. I addressed service of the hearing package and Tenants' evidence.

The Tenant testified that the hearing package and evidence were sent to the Landlord's residence by registered mail December 22, 2020. The Tenant provided Tracking Number 1. The Tenants had submitted a photo of the package. I looked Tracking Number 1 up on the Canada Post website which shows notice cards were left December 30, 2020 and January 04, 2021. The website shows the package was unclaimed and returned.

Based on the undisputed testimony of the Tenant, photo and Canada Post website information, I find the Landlord was served with the hearing package and evidence in accordance with sections 89(1)(c) and 88(c) of the *Residential Tenancy Act* (the "*Act*"). I also find the Tenants complied with rule 3.1 of the Rules in relation to the timing of service. The Landlord cannot avoid service by failing to pick up registered mail. The Landlord is deemed to have received the package December 25, 2020 pursuant to section 90(a) of the *Act*.

In relation to the dispute of a Two Month Notice to End Tenancy for Landlord's Use of Property, the Tenant testified that the Landlord did not serve the Tenants with a Two Month Notice to End Tenancy for Landlord's Use of Property on the RTB form.

The above issues took more than 10 minutes to address. After addressing the above issues, I allowed the Tenant to withdraw the Application for the following reasons.

There is no prejudice to the Landlord in allowing the Tenant to withdraw the Application, other than in relation to the dispute of a Two Month Notice to End Tenancy for Landlord's Use of Property.

The Landlord could have sought an Order of Possession based on the Two Month Notice to End Tenancy for Landlord's Use of Property at the hearing. However, I was satisfied the Landlord was served and the Landlord did not appear at the hearing. I ensured 10 minutes had passed from the start of the hearing before concluding the hearing and the Landlord did not call into the hearing during this time. The Tenants had vacated the rental unit and therefore an Order of Possession was a moot point. The Landlord had not served the Tenants a Two Month Notice to End Tenancy for

Landlord's Use of Property on the RTB form and therefore could not have obtained an Order of Possession given sections 49(7) and 52 of the *Act*.

In the circumstances, I found it appropriate to allow the Tenant to withdraw the Application despite not having the Landlord's consent to do so in relation to the dispute of a Two Month Notice to End Tenancy for Landlord's Use of Property.

### Conclusion

The Application is withdrawn at the request of the Tenant.

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: March 15, 2021

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Residential Tenancy Branch