



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OLC, RP, LRE

### Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution, filed on January 26, 2021, in which the Tenants sought the following relief:

- an Order canceling a 1 Month Notice to End Tenancy for Cause;
- an Order restricting the Landlords' right to enter the rental unit;
- an Order that the Landlord:
  - make repairs to the rental unit; and,
  - comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the residential tenancy agreement.

The Tenants' Application was scheduled as a teleconference hearing at 11:00 a.m. on April 20, 2021. Both parties called into the hearing.

### *Preliminary Matter—Landlord's Name*

Hearings before the Residential Tenancy Branch are conducted in accordance with the *Residential Tenancy Branch Rules of Procedure* (the "*Rules*"). *Rule 4.2* of the *Rules* allows me to amend an Application for Dispute Resolution in circumstances where the amendment might reasonably have been anticipated. The authority to amend is also provided for in section 64(3)(c) of the *Act* which allows an Arbitrator to amend an Application for Dispute Resolution.

In the case before me, the Tenants incorrectly spelled the Landlord's surname on the Application. I therefore Amend the Tenant's Application to correctly name the Landlord.

*Preliminary Matter—Matters to be Decided*

At the outset of the hearing the parties confirmed the Landlord did not issue a formal notice to end tenancy. The Tenant, W.L., confirmed they applied to cancel such a notice as they anticipated receiving one from the Landlord.

The Tenants failed to file any evidence in support of their Application until April 6, 2021, only 13 clear days prior to the hearing before me. W.L. stated that they were waiting to receive a notice to end tenancy before filing their evidence.

The Landlord filed evidence in February of 2021, however this evidence was filed before the Landlord had a clear understanding of the Tenants' claim. The Landlord did not file any evidence in response to the materials served on her shortly before the hearing.

Hearings before the Residential Tenancy Branch are conducted in accordance with the *Rules* and the Principles of Natural Justice. *Rule 3.1* sets out an applicant's responsibilities with respect to filing and serving of documents. As this is a Tenants' Application, they were obligated to comply with *Rule 3.1*.

**3.1 Documents that must be served**

The applicant must, within 3 days of the hearing package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the application for dispute resolution;
- b) the notice of dispute resolution proceeding letter provided to the applicant by the Residential Tenancy Branch;
- c) the dispute resolution proceeding information package provided by the Residential Tenancy Branch;
- d) a detailed calculation of any monetary claim being made;
- e) a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and
- f) any other evidence, including evidence submitted to the Residential Tenancy Branch with the application for dispute resolution, in accordance with Rule 2.5 [*Documents that must be submitted with an application for dispute resolution*].

The *Rules* relating to the exchange of documents prior to the hearing is a codification of one of the Principles of Natural Justice which provides that a party to a dispute has the right to receive and meaningfully respond to any and all evidence submitted by the other party. In this case the Tenants failed to provide any evidence to the Landlord until less than two weeks prior to the hearing such that the Landlord was not afforded a reasonable opportunity to reply.

Additionally, much of the parties' evidence relates to the Tenants' request to cancel a notice to end tenancy for cause, when such a notice was not in fact served on the Tenants.

*Rule 3.7* provides that all documents to be relied on as evidence must be clear and legible. It further provides that an Arbitrator has the discretion to not consider evidence if the Arbitrator determines it is not readily identifiable, organized, clear and legible.

In this case, the Tenants failed to provide evidence in support of their claim at the time of filing. They were not able to file evidence until less than two weeks prior to the scheduled hearing such that the Landlord was not afforded an opportunity to reply to the Tenants' evidence. As well, much of the evidence related to a claim which was not relevant as the Tenants did not receive a notice to end tenancy. In all the circumstances, I find the evidence is not readily identifiable and organized with respect to relevant issues.

**I therefore exercise my discretion and dismiss the Tenants' claim with leave to reapply.**

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 20, 2021

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Residential Tenancy Branch