



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      RPP, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution that was filed by the Tenants on November 5, 2021, under the *Residential Tenancy Act* (the *Act*), seeking:

- An order that the Landlord return their personal property; and
- Recovery of the filing fee.

This matter was set for hearing by telephone conference call at 11:00 A.M. (Pacific Time) on December 9, 2021, and was attended by the arbitrator and the Respondents J.B. and B.T. Both the arbitrator and the Respondents attended on time and ready to proceed, however, no one was present on behalf of the Applicants at the start of the hearing. The Landlords acknowledged service of the Notice of Dispute Resolution Proceeding Package from the Tenants, which contains a copy of the Application and the Notice of Hearing, and raised no concerns with regards to the timing or method of service. As a result, I accept that they were properly served by the Tenants in accordance with the *Act* and the Rules of Procedure. Rule 7.1 of the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. I confirmed that the hearing information shown on the Notice of Dispute Resolution Proceeding, which contains the Notice of Hearing, was correct, and as the Respondents attended the hearing on time and ready to proceed, the hearing proceeded as scheduled. The teleconference line remained open while we waited for the Applicants, who are the Tenants, to appear, and while I obtained required information about the tenancy and the Application from the Landlords, who are the Respondents.

The Rules of Procedure state that the Respondents' evidence must be served on the Applicants. As neither the Tenants nor an agent acting on their behalf attended the

hearing, I confirmed service of these documents as explained below. The Landlords testified that the documentary evidence before me from them was sent to the Tenants by email on November 29, 2021, at the address for service by email listed by the Tenants on the Application. The Landlords stated that it was also sent to the Tenants by regular mail on November 30, 2021, at the address for service for the Tenants listed in their Amendment to the Application for Dispute Resolution, as the Tenants were not currently residing at the rental unit. I accept the Landlords uncontested and affirmed testimony with regards to the service of their documentary evidence on the Tenants. As a result, I find that the Tenants were deemed served with the Landlords documentary evidence in accordance with the Act and the Rules of Procedure on December 2, 2021, by email and deemed re-served on December 5, 2021, by regular mail.

The Landlords were advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The Landlords were asked to refrain from speaking over one another and to hold their questions and responses until it was their opportunity to speak. The Landlords were also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and the parties confirmed that they were not recording the proceedings.

The Landlords agreed that possessions belonging to the Tenants still remain in the rental unit. However, they stated that they are currently unavailable as the result of a fire, not because the Landlords are unreasonably withholding access to them. The Landlords stated that a fire occurred in the rental unit on October 29, 2021, and as a result, there have been structural and asbestos contamination concerns, as the chimney to the fireplace was potentially unstable, and holes were cut into portions of the rental unit by the fire department. The Landlords stated that the rental unit was initially off-limits due to the fire investigation, and that once that concluded, it was off limits while structural stability and asbestos contamination were being ruled out. The Landlords stated that the rental unit has now been assessed as structurally sound, but that the hazardous materials assessment was only conducted last week, and they have yet to receive the results. The Landlords stated that given the age of the rental unit and the areas opened up by the fire department, there is a serious risk of asbestos contamination, and as a result, neither they nor the insurance company have permitted the Tenants to re-enter or re-occupy the rental unit. The Landlords pointed to their documentary evidence in support of this testimony.

The Landlords stated that they should receive the hazardous materials report any day, and that once it is received, they will take the appropriate action to either grant the Tenants immediate access to their possessions if there is no asbestos or hazardous materials risk, or to undertake, as soon as possible, any remediation required, so that the Tenants can gain access to the rental unit and their possessions as soon as possible.

Rule 7.3 of the Rules of Procedure states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to reapply. When the Applicants did not appear the hearing proceeded as set out above and in accordance with rules 7.1 and 7.3 of the Rules of Procedure. Based on the Landlords' uncontested and affirmed testimony and documentary evidence, and as the Applicants failed to attend the hearing by 1:22 P.M. to present any evidence or testimony in support of the Application, I dismissed the Application. I advised the Landlords in the hearing of the dismissal, answered some procedural question regarding the dismissal, and advised them that the hearing was concluded.

As I was ending the conference call at 11:23 P.M. the Tenants C.K. and F.H. called into the teleconference. I advised them that the hearing had commenced 23 minutes prior, that the hearing had been concluded, and that a decision had already been rendered and verbally communicated to the Landlords. I advised the Tenants that the Notice of Hearing in the documentary evidence before me, which was provided to them by the Residential Tenancy Branch (the Branch) on November 9, 2021, by email (as per their request in the Application), states on page one, under the heading "Hearing Information", that the hearing is scheduled for 11:00 A.M. Pacific Time on Thursday December 9, 2021, and will be conducted by telephone conference call. This section of the Notice of Hearing also provides the teleconference phone number, access code, and instructions for attending the telephone conference call.

Based on the above, I find that the Tenants received ample notice of the date and time of the hearing of their own Application and the instructions for attendance. Further to this, I note that at the time the Tenants called into the hearing, the matter had already been concluded and a decision had already been rendered and communicated verbally to the Landlords. As a result of the above, I declined to reopen the hearing and advised the Tenant's that their Application is therefore dismissed. However, as the Landlords agreed that possessions belonging to the Tenants still remain in the rental unit and that they will provide access to them as soon as reasonably possible once it is safe to do so, I have dismissed the Tenant's claim for the return of their personal possessions with

leave to reapply, so that the Tenants have an avenue of redress in the event that the Landlord does not follow through.

As the Tenant's Application was dismissed, I decline to grant them recovery of the filing fee.

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

Dated: December 15, 2021

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Residential Tenancy Branch