



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, RP, OLC, FFT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants December 15, 2021 (the “Application”). The Tenants applied as follows:

- To dispute a One Month Notice to End Tenancy for Cause dated December 2021 (the “Notice”)
- For a repair order
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement
- To recover the filing fee

The Tenants appeared at the hearing with the Witness. Nobody appeared at the hearing for the Landlord. I explained the hearing process to the Tenants who did not have questions when asked. I told the Tenants they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Tenants provided affirmed testimony.

The Tenants advised at the outset of the hearing that the dispute of the Notice has been resolved in a previous hearing on File 550. I looked File 550 up and confirmed it dealt with the Notice. I looked at the decision on File 550 and confirmed the parties came to a settlement agreement in which the Tenants agreed to vacate the rental unit by May 31, 2022.

The Tenants sought to withdraw the Application, other than the request to recover the filing fee. I proceeded to hear the Tenants on the filing fee issue.

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 Tenants testified that the hearing package was sent to the Landlord's residence by registered mail on December 23, 2021. The Tenants had submitted a registered mail receipt with Tracking Number 395 on it and they confirmed this relates to the hearing package. I looked Tracking Number 395 up on the Canada Post website which shows the package was delivered to the Landlord December 31, 2021.

Based on the undisputed testimony of the Tenants, registered mail receipt and Canada Post website information, I am satisfied the Landlord was served with the hearing package in accordance with section 89(1)(c) of the *Residential Tenancy Act* (the "Act"). Based on the Canada Post website information, I am satisfied the Landlord received the hearing package December 31, 2021. I find the hearing package was served in sufficient time to allow the Landlord to prepare for, and appear at, the hearing. I also find the Tenants complied with rule 3.1 of the Rules in relation to the timing of service.

Given I was satisfied the Landlord was served with the hearing package, I proceeded to hear the Tenants on their request to recover the filing fee.

As well, given the dispute of the Notice was dealt with on File 550 and given the Landlord did not appear at this hearing to address the dispute of the Notice, I allow the Tenants to withdraw the dispute of the Notice. I also allow the Tenants to withdraw the request for a repair order and for an order that the Landlord comply with the Act, regulation and/or the tenancy agreement because there is no prejudice to the Landlord in allowing the Tenants to do so.

### Issue to be Decided

1. Are the Tenants entitled to recover the filing fee?

### Background and Evidence

The Tenants testified as follows. The Tenants filed an Application for Dispute Resolution to dispute the Notice and sent the Landlord the hearing package by registered mail. An error occurred in relation to delivery of the hearing package to the Landlord. The Tenants called the RTB about the error in delivery and the RTB told the Tenants to file a second Application for Dispute Resolution in case the first hearing

package was lost in the mail. The Tenants filed a second Application for Dispute Resolution to dispute the Notice.

### Analysis

Section 72 of the *Act* addresses recovery of a filing fee and states:

72 (1) The director may order payment or repayment of a fee under section 59 (2) (c) [starting proceedings] or 79 (3) (b) [application for review of director's decision] **by one party to a dispute resolution proceeding to another party** or to the director. (emphasis added)

Filing fees are usually awarded when parties are successful on their Application for Dispute Resolution and not awarded when parties are not successful.

I decline to award the Tenants recovery of the filing fee for two reasons. First, the Tenants have not been successful in the Application because the issues raised, other than the request to recover the filing fee, were withdrawn. Second, I do not find the basis for requesting the filing fee compelling given it is not the fault of the Landlord that there was a delivery error with the hearing package for the first Application for Dispute Resolution or that the Tenants chose to file a second Application for Dispute Resolution due to the error. I find there is no basis to award the Tenants recovery of the filing fee and I dismiss this request without leave to re-apply.

### Conclusion

The dispute of the Notice, request for a repair order and request for an order that the Landlord comply with the Act, regulation and/or the tenancy agreement are withdrawn. The request to recover the filing fee is dismissed without leave to re-apply.

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 29, 2022

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Residential Tenancy Branch