



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ERP, FFT

### Introduction

The Tenants seek the following relief under the *Residential Tenancy Act* (the “*Act*”):

- an order pursuant to s. 33 that the Landlord undertake emergency repairs; and
- return of their filing fee pursuant to s. 72.

K.R. and A.R. appeared as Tenants. S.S. appeared as Landlord.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing.

The Tenants advise that the Landlord was served with the Notice of Dispute Resolution by way of registered mail sent on March 3, 2022. The Landlord acknowledges receipt of the Notice of Dispute Resolution. I find that the Notice of Dispute Resolution was served in accordance with s. 89 of the *Act* and was received by the Landlord based on her acknowledgment.

The Landlord provided responding evidence in the form of a buyer’s notice to the seller for vacant possession. The Landlord indicates that this, with a Two-Month Notice to End Tenancy, was served on the Tenant on February 1, 2022. The Tenants acknowledge receiving the same. I find that the Landlord’s responding evidence was sufficiently served on the Tenants pursuant to s. 71(2) of the *Act*.

The Tenants admitted at the hearing that they did not serve their evidence on the Landlord and the Landlord confirmed not receiving evidence from the Tenants. Pursuant to Rule 10.3 of the Rules of Procedure, an applicant must serve their evidence on the respondent with the rest of their application materials. I find that the Tenants have failed to serve their evidence based on their admission that they did not do so. Accordingly, the documents provided to the Residential Tenancy Branch are not admitted into the record as evidence as they were not served on the Landlord as required by the Rules of Procedure and in accordance with s. 89 of the *Act*.

#### Dismissal of the Tenants' Application

At the hearing, I was advised by the Tenants that they received a Two-Month Notice to End Tenancy with an effective date of March 31, 2022. The Tenants confirmed receiving the same from the Landlord on February 1, 2022. The Tenants further confirmed that they have accepted the Two-Month Notice to End Tenancy and that they will be vacating the rental unit on March 31, 2022. The Landlord confirmed that the property has sold and the sale is closing at the end of the month.

The Tenants' filed their application with the Residential Tenancy Branch on February 9, 2022. The emergency repair at issue was with respect to a roof leak they indicate started in September 2021. Perplexingly, A.R. admitted at the hearing that they held little expectation that repairs would be undertaken by the Landlord given that the tenancy is ending on March 31, 2022. The Tenants alluded to a claim for compensation. However, this is not relevant to the present claim under s. 33 as the Tenants admit that they did not pay for repairs.

Under the circumstances, there is little value in granting an order for emergency repairs where the Tenants admit the tenancy will be ending in two-weeks and where the Landlord is selling the property. I dismiss the Tenants application in light of the impending end to the tenancy as such an order is no longer necessary. If for whatever reason the tenancy does not end on March 31, 2022, the Tenants may reapply for the emergency repairs. I make no findings with respect to the issues in dispute in the Tenants' application.

As the Tenants application was dismissed, I find that it would be inappropriate to grant them an order for their return of their filing fee. The Tenants shall bear the expense of their application. Accordingly, I dismiss the Tenants claim under s. 72 without 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: March 17, 2022

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Residential Tenancy Branch