



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PROMPTON REAL ESTATE SERVICES INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

CNL-MT OLC, FFT

### Introduction

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenants, in which they applied to cancel a Two Month Notice to End Tenancy for a Landlord's Use of Property, for more time to apply to cancel this Notice to End Tenancy, for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* and/or the tenancy agreement, and to recover the fee for filing the Application for Dispute Resolution.

At the hearing the Tenants advised that the rental unit has been vacated and, as such, they would like to withdraw their application to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property. I find this Application for Dispute Resolution has been amended to withdraw the application to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property and to withdraw the application for more time to apply to cancel this Notice to End Tenancy.

The female Tenant stated that on March 24, 2023 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on March 20, 2023 was served to the Respondent with the initials "PRESI" (PRESI). The Agent for the Landlord #1 acknowledged receipt of these documents.

The female Tenant stated that on March 24, 2023 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on March 20, 2023 was served to the Respondent with the initials "CM" (CM). CM stated that these documents were received from a neighbour on April 27, 2023.

As the aforementioned documents were received by both respondents, that evidence was accepted as evidence for these proceedings.

On May 12, 2023 the Tenant submitted additional evidence to the Residential Tenancy Branch. The female Tenant stated that this evidence was sent to PRESI, via email, on May 27, 2023. The Agent for the Landlord #1 acknowledged receipt of these documents.

The female Tenant stated that this evidence was sent to CM, via registered mail, on May 12, 2023. CM stated that she received notice that registered mail had been sent to her, however she was “too busy” to pick up that package.

On the basis of the undisputed evidence, I find that the evidence package of May 12, 2023 was properly to each party, even though CM opted not to receive the package. As the evidence was properly served to each Respondent, it was accepted as evidence for these proceedings.

On May 15, 2023 PRESI submitted additional evidence to the Residential Tenancy Branch. The Agent for the Landlord #1 stated that this evidence was sent to the Tenants, via registered mail, on May 15, 2023. The Tenants acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On May 31, 2023 CM submitted additional evidence to the Residential Tenancy Branch. CM stated that this evidence was not served to the Tenants. As the evidence was not served to the Tenants, it was not accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Is there a need to issue an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* and/or the tenancy agreement?

Background and Evidence

The Tenants and the Respondents agree that the Tenants were served with a Two Month Notice to End Tenancy for Landlord's Use of Property that declared they must vacate the unit by April 14, 2023 and that they vacated the unit on March 31, 2023.

In support of the application for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* and/or the tenancy agreement, the Tenants wrote:

*We agreed to move out by April 14, 2023 per the notice. I found the purchaser, Celina Matin has not acted in good faith. I found on Craigslist a posting on March 17, 2023 of our apartment with my furniture in it. Listed to rent for \$3500 starting on May 1, 2023. I had a friend reply to the posting to confirm it is true. Payam Matin replied in detail and confirmed it is our apartment for rent and that we still live there. We are requesting compensation for having to leave our apartment.*

At the hearing the female Tenant acknowledged that the Application for Dispute Resolution does not declare that the Tenants are seeking a monetary Order; the Application for Dispute Resolution does not declare the amount of compensation the Tenants are seeking because they had to “leave our apartment”; and that the Tenants did not submit a monetary Order declaring the amount of compensation being sought.

CM stated that she was not aware the Tenants were seeking financial compensation.

Analysis

On the basis of the female Tenant’s testimony, I find that when the Tenants applied for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* and/or the tenancy agreement, they intended to apply for monetary compensation due to them because they were served with a Two Month Notice to End Tenancy for Landlord's Use of Property and the purpose for ending the tenancy was not accomplished within a reasonable period after the effective date of the notice, and/or the rental unit, has not

been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

While I accept that the Tenants intended to apply for the compensation noted above, I find that the Tenants did not properly notify the Applicants they were seeking financial compensation. In reaching this conclusion I was influenced by:

- The Tenants did not apply for a monetary Order;
- The Tenants did not clearly specify that they were claiming compensation that is the equivalent of 12 month's rent, which is the amount of compensation that may be due pursuant to section 51(2) of the *Act*;
- The Tenants did not serve the Respondents with a monetary Order worksheet that may have altered the Respondents to a monetary claim; and
- CM's testimony that she did not understand the Tenants were making a monetary claim.

As the Tenants did not properly notice the Applicants that they were seeking financial compensation, I find I am unable to consider that claim at these proceedings. The Tenants retain the right to file another Application for Dispute Resolution seeking compensation pursuant to section 51(2) of the *Act*.

As the Tenants have not established that their application for an Order of requiring the Landlord to comply with the *Act* and/or the tenancy agreement is related to anything other than a monetary Order, I dismiss their application for this Order, with leave to reapply if necessary.

As the Tenants have failed to establish the merits of the application for an Order of requiring the Landlord to comply with the *Act* and the Tenants vacated the unit prior to the merits of their application to cancel the Notice to End Tenancy being considered, I find they are not entitled to recover the fee paid for filing this Application for Dispute Resolution. That claim is dismissed, without leave to reapply.

### Conclusion

The Application for Dispute Resolution is dismissed.

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: June 01, 2023

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Residential Tenancy Branch