



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM DECISION

A hearing was convened on March 14, 2017 in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied to set aside a One Month Notice to End Tenancy for Cause; to recover the fee for filing the Application for Dispute Resolution, and for other".

In the "Details of Dispute" section of the Application for Dispute Resolution the Tenants declared, in part, that on November 30, 2016 the Landlord "verbally demanded our eviction with no reason given verbally or written". In the "Details of Dispute" section of the Application for Dispute Resolution the Tenants declared, in part, that a written notice to end tenancy was given by the Landlord on February 04, 2017.

At the hearing on March 14, 2017 the female Tenant stated that they intended to apply to cancel the Two Month Notice to End Tenancy for Landlord's Use of Property that was served to them on February 04, 2017. She stated that the Tenants did not intend to apply to cancel a One Month Notice to End Tenancy for Cause, as they were never served with a One Month Notice to End Tenancy for Cause.

On the basis of the testimony of the female Tenant and the information provided in the "Details of Dispute" section of the Application for Dispute Resolution, I am satisfied that the Tenants intended to dispute a Two Month Notice to End Tenancy for Landlord's Use of Property when they filed their Application for Dispute Resolution on February 14, 2017.

The female Tenant stated that on February 18, 2017 the Application for Dispute Resolution, the Notice of Hearing, and 6 pages of evidence submitted to the Residential Tenancy Branch were left in a box on the dryer which is where the Tenants leave mail and rent payments for the Landlord.

When a tenant files an Application for Dispute Resolution in which the tenant has applied to cancel a notice to end tenancy, the tenant is required to serve the Application for Dispute Resolution to the landlord in a manner that complies with section 89(1) of the *Residential Tenancy Act (Act)*.

Section 89(1) of the *Act* stipulates, in part, that a tenant must serve a landlord with an Application for Dispute Resolution in one of the following ways:

- (a) by leaving a copy with the person;
- (b) by leaving it with an agent for the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or carries on business;

(e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

The Tenants submitted no evidence to show that the Landlord or her agent was personally served with the Application for Dispute Resolution or Notice of Hearing and I therefore find that she was not served in accordance with sections 89(1)(a) or 89(1)(b) of the *Act*.

The Tenants submitted no evidence to show that the Application for Dispute Resolution was mailed to the Landlord and I therefore find that she was not served in accordance with section 89(1)(c) of the *Act*.

There is no evidence that the director authorized the Tenants to serve the Application for Dispute Resolution to the Landlord in an alternate manner and I therefore find that she was not served in accordance with section 89(1)(e) of the *Act*.

The Tenants submitted no evidence to cause me to conclude that the Landlord received the Application for Dispute Resolution and I therefore cannot conclude that the Application has been sufficiently served pursuant to sections 71(2)(b) or 71(2)(c) of the *Act*.

As the Tenants have failed to establish that this Application for Dispute Resolution was served to the Landlord in accordance with section 89(1) of the *Act*, the hearing was adjourned for the purposes of allowing the Landlord to re-serve documents to the Landlord.

I hereby direct the Tenants to serve the Landlord with another copy of the Tenants' Application for Dispute Resolution and the 6 pages of evidence submitted to the Residential Tenancy Branch. I direct the Tenants to serve these documents to the Landlord, via registered mail, as soon as they receive this interim decision. I further direct the Tenants to make every reasonable attempt to serve these documents to the Landlord, in person, as soon as is possible.

At the hearing on March 14, 2017 the female Tenant informed me that the Landlord has also filed an Application for Dispute Resolution in regards to the Two Month Notice to End Tenancy, which is scheduled to be heard at a hearing on March 31, 2017.

Residential Tenancy Branch records show that the Landlord has filed an Application for Dispute Resolution, the number of which appears on the first page of this interim decision. The records show that the Landlord has filed an application for an Order of Possession for Landlord's Use of Property.

As the Tenants' Application for Dispute Resolution and the Landlord's Application for Dispute Resolution appear to be substantially linked, I find the two matters should be joined, pursuant to rule 2.10 of the Residential Tenancy Branch Rules of Procedure. I

therefore find that the two Applications for Dispute Resolution will be considered at the hearing scheduled for March 31, 2017.

This interim 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 14, 2017

Residential Tenancy Branch