



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Plan A Real Estate Services Ltd. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes

ET, FFL

Introduction

This hearing was scheduled for 11:00 a.m. on today's date, via teleconference call, to deal with a landlord's application for an order to end the tenancy early and obtain an Order of Possession under section 56 of the Act. The landlord's agent appeared for the hearing but there was no appearance on part of the tenant.

Since the tenant did not appear, I explored service of the hearing documents upon the tenant. The landlord's agent testified that the Landlord's Application for Dispute Resolution and other required documents were sent to the tenant via registered mail on February 7, 2020 using the rental unit address, but the registered mail was returned as unclaimed. The landlord's agent testified the tenant had possession of the rental unit until he vacated the unit on March 17, 2020. The landlord's agent orally provided a registered mail tracking number as proof of service, which I have recorded on the cover page of this decision.

Although the registered mail went unclaimed, I accepted the tenant was still residing in the rental unit at the time the registered mail was sent to him and section 90 of the Act deems a person to be in receipt of documents mailed to them five days after mailing. In keeping with section 90 of the Act, I deemed the tenant sufficiently served with notification of this proceeding and I continued to hear from the landlord.

Having heard the tenant has already vacated the rental unit, the landlord's agent confirmed that the landlord no longer requires an Order of Possession and I do not provide one with this decision. Accordingly, I dismissed the landlord's application without leave to reapply.

The landlord's agent proceeded to request that I make a finding or ruling that the Act does not apply to the subject living accommodation based on their tenancy agreement,

as it is written. I declined to grant the request as there was no indication in the documents served to the tenant with notification of this proceeding that the landlord would be taking the position at the hearing that the Act does not apply to the living accommodation. In keeping with the principles of natural justice, I find it would be unfair to hear a one-sided argument concerning a matter that is without advance notice to the other party. Therefore, I did not hear anything further with respect to jurisdiction and I make no finding as to whether the Act applies to the subject living accommodation.

I cautioned the landlord that parties cannot avoid or try to contract out of the Act and terms inserted into an agreement that are intended to avoid the Act are not enforceable. I suggested the landlord would be well served to obtain the services of a legal professional so as to obtain appropriate legal advice.

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 31, 2020

Residential Tenancy Branch