



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC FFT

Introduction

This hearing was convened by way of conference call in response to an application for dispute resolution (“Application”) filed by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”). The Tenant applied for the following:

- an order cancelling a One Month Notice to End Tenancy for Cause dated June 20, 2022 (“1 Month Notice”); and
- authorization to recover the filing fee for the Application from the Landlord.

The Landlord’s agent (“KC”), the Tenant and the Tenant’s advocate (“LH”) attended the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure*. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

LH stated the Tenant served the Notice of Dispute Resolution Proceeding (“NDRP”) on the Landlord by registered mail on July 15, 2022. LH submitted into evidence a copy of the Canada Post receipt and the tracking stub to corroborate his testimony of service of the NDRP on the Landlord. KC acknowledged the Landlord received the NDRP. I find the NDRP was served on the Landlord in accordance with the provisions of section 89 of the Act.

LH stated the Tenant served her evidence on the Landlord by registered mail on October 25, 2022. LH provided the Canada Post tracking number for service of the Tenant’s evidence on the Landlord to corroborate his testimony of service of the Tenant’s evidence on the Landlord. KC acknowledged the Landlord received the Tenant’s evidence. I find the Tenant’s evidence was served on the Landlord pursuant to the provisions of section 88 of the Act.

Preliminary Matter – Late Service of Landlord’s Evidence on Tenant

KC stated the Landlord served its evidence on the Tenant’s door on November 7, 2022. Pursuant to section 90 of the Act, I find the Tenant was deemed to have received the Landlord’s evidence three days after it was posted on the Tenant’s door, being November 10, 2022. LH stated that, as the Landlord’s evidence was receive late, he and the Tenant did not have the opportunity to review and respond to the Landlord’s evidence. LH stated that, if I were to accept the Landlord’s late evidence, the Tenant would be prejudiced.

Rules 3.15 of the RoP states:

3.15 Respondent’s evidence provided in single package

Where possible, copies of all of the respondent’s available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent’s evidence should be served on the other party in a single complete package.

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent’s evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

See also Rules 3.7 and 3.10.

The word “Days” is defined in the RoP as:

Days

- a) If the time for doing an act in relation to a Dispute Resolution proceeding falls or expires on a holiday, the time is extended to the next day that is not a holiday.
- b) If the time for doing an act in a government office (such as the Residential Tenancy Branch or Service BC) falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open.

- c) In the calculation of time expressed as clear days, weeks, months or years, or as *"at least" or "not less than" a number of days, weeks, months or years, the first and last days must be excluded.*
- d) In the calculation of time not referred to in subsection (c), the first day must be excluded and the last day included.

[emphasis in italics added]

The Landlord's evidence was received by the Tenant not less than seven days before the hearing. LH stated the Tenant would be prejudiced if I were to accept the Landlord's evidence for this proceeding. Based on the foregoing, I find the Landlord did not comply with Rule 3.15 and that it would be prejudicial to the Tenant if I accepted the Landlord's evidence. As such, I order that the Landlord's evidence is not admissible for this proceeding.

Settlement

Pursuant to section 63 of the Act, an arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

The parties agreed to the following final and binding settlement of all issues currently under dispute:

1. The Landlord agrees to cancel the 1 Month Notice;
2. The Tenant agrees to withdraw the Application;
3. The Landlord agrees to provide the Tenant, without charge, with area carpets for the Tenant's rental unit;
4. The Tenant agrees that she, or any person permitted on the residential property by the Tenant, will (i) not significantly interfere with or unreasonably disturb another occupant or the Landlord of the residential property or (ii) put the Landlord's property at significant risk; and
5. The Landlord agrees that this settlement is not an admission by the Tenant that she has breached any provision of the Act, *Residential Tenancy Regulations* and/or the tenancy agreement.

These particulars comprise the full and final settlement of all claims made by the Tenant in the Application. The parties gave verbal affirmation at the hearing that they understood and agreed to the above terms as legal, final, and binding, which settle all aspects of claims made by the Tenant in the Application.

Conclusion

As the parties have reached a full and final settlement of all the claims set out in the Application, I make no factual findings about the merits of the Application.

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: November 14, 2022

Residential Tenancy Branch