



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

This hearing dealt with the Tenant's Application for Dispute Resolution under the Residential Tenancy Act requesting to cancel a Notice to End Tenancy for Cause.

Both parties attended the hearing and provided affirmed testimony.

The Tenant filed her application on March 12, 2012. Neither party submitted in evidence a copy of the Notice to End Tenancy. The Tenant testified that she could not locate a copy of the Notice to End Tenancy.

The Landlord confirmed that he had been served with the Tenant's application, evidence, and Notice of Hearing. The Landlord testified that he could not locate a copy of the Notice to End Tenancy. The Landlord made no submission of evidence.

The hearing package of documents provided to the Tenant contains instructions on evidence and the deadlines to submit evidence to each party, as does the Notice of Hearing.

The Residential Tenancy Branch Rules of Procedure section 3.5 states the following:

3.5 Evidence not filed with the Application for Dispute Resolution

a) Copies of any documents, photographs, video or audio tape evidence that are not available to be filed with the application, but which the applicant intends to rely upon as evidence at the dispute resolution proceeding, must be received by the Residential Tenancy Branch and must be served on the respondent as soon as possible, and at least (5) days before the dispute resolution proceeding as those days are defined the "Definitions" part of the Rules of Procedure.

The Notice to End Tenancy document is not a mere technicality. In fact, it is hard to imagine another document being more relevant or material to the claim. The responsibility of proving a claim is on the person making the claim.

The Tenant and the Landlord both failed to provide a copy of the Notice to End Tenancy into evidence and both testified that they were unable to locate their copy of the Notice to End Tenancy. I find that the parties failed to provide sufficient evidence to determine whether the Notice should be cancelled or confirmed.

As a result, I dismiss the claim.

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 26, 2012.

Residential Tenancy Branch