



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Glassman Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MNDC, ERP, LRE, OPT, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- an Order of Possession of the rental unit pursuant to section 54; and
- authorization to recover his filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. At the commencement of the hearing, Landlord representative KY (the landlord) testified that the tenant had paid all of the rent identified as owing in the 10 Day Notice. She said that the landlord was no longer pursuing the 10 Day Notice and was not seeking an end to this tenancy as there is no outstanding rent for this tenancy. As such, the tenant withdrew his applications for a cancellation of the 10 Day Notice and his application for an Order of Possession pursuant to section 54 of the *Act*. These portions of the tenant's application are withdrawn.

Preliminary Matters- Service of Documents

The tenant confirmed that he received the landlord's 10 Day Notice posted on his door on September 3, 2013. I am satisfied that the 10 Day Notice was served in accordance with the *Act*. The tenant testified that he sent the landlord a complete copy of the tenant's dispute resolution hearing package, including a copy of the tenant's application for dispute resolution, by registered mail on September 10, 2013. The landlord

confirmed that her company received the tenant's package, which included only a copy of the notice of hearing and Residential Tenancy Branch information accompanying that notice. The landlord read the contents of a letter she sent to the RTB on October 9, 2013, in which she maintained that the tenant had not included a copy of his application for dispute resolution in the package of information he provided to the landlord. She gave sworn oral testimony that the landlord was unaware of the remedies sought in the tenant's application and had not received any other written evidence from the tenant. She testified that the landlord had not been given a proper opportunity to know the case against the landlord so as to be in a position to respond to the tenant's allegations.

Analysis- Service of Hearing Package

There is undisputed evidence from both parties that the tenant sent and the landlord received a hearing package from the tenant. However, the contents of that hearing package are at issue. A fundamental element of the rules of natural justice is that a respondent has to be given an adequate opportunity to know the case against them so as to be in a position to respond to that case. In this situation, I advised the parties at the hearing that it would not be fair to proceed with a hearing of the tenant's application if the respondent was correct in her assertion that the tenant had overlooked including a copy of the tenant's application for dispute resolution in his hearing package. As I am not satisfied that this information was included in the tenant's hearing package, I dismiss the remaining portions of the tenant's application (with the exception of those portions withdrawn by the tenant at the hearing) with leave to reapply. I do so as I am not satisfied that it would be fair to proceed with a hearing if the tenant has failed to serve the landlord with a copy of his application for dispute resolution in accordance with section 89(1) of the *Act*.

Conclusion

The tenant's application for the cancellation of the landlord's 10 Day Notice and his application for the issuance of an Order of Possession to the tenant are withdrawn. The 10 Day Notice is of no force or effect and this tenancy continues. The remainder of the tenant's application is dismissed with leave to reapply. 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: October 18, 2013

Residential Tenancy Branch

