



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NewDawn Services Ltd.
and [tenant name suppressed to protect privacy]

INTERIM DECISION

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for damage; to keep all or part of the security deposit; to recover the fee for filing this Application for Dispute Resolution; and for "other".

The hearing was originally convened on August 25, 2014 but was adjourned to provide the Landlord with the opportunity to provide the Tenant with colour photographs. At the hearing on August 25, 2014 the Agent for the Landlord acknowledged that colour photographs were submitted to the Residential Tenancy Branch and black and white photographs were sent to the Tenant on May 02, 2014.

The hearing was reconvened on November 04, 2014. At this hearing the Tenant stated that on October 27, 2014 she submitted documents to the Residential Tenancy Branch, which the Tenant wishes to rely upon as evidence, which were personally served to the Landlord on October 28, 2014.

The Landlord acknowledged receipt of these documents on October 28, 2014 but argued that they should not be considered as they were not served to him within the timelines established by the Residential Tenancy Branch Rules of Procedure. The Landlord declined the opportunity for an adjournment for the purposes of considering the documents he received on October 28, 2014. He stated that he did not need more time to consider the documents; he simply believes they should be excluded because they were not served in accordance with the Rules of Procedure.

The Landlord and the Tenant were advised that I was not in possession of the documents that were served to the Landlord on October 28, 2014 and that I would be unable to consider them at the hearing on November 04, 2014. The parties were advised that the hearing on November 04, 2014 would proceed; that the Tenant would be given the opportunity to discuss these documents at the hearing; and that an adjournment would be considered during the hearing if the content of the documents was in dispute.

Legal Counsel for the Tenant stated that it is possible that the documents submitted to the Residential Tenancy Branch were inadvertently filed with a separate Application for Dispute Resolution. The Landlord and the Tenant agree that some of these documents relate to when the rental unit was vacated.

There was insufficient time to conclude the hearing on November 04, 2014 so the matter was adjourned. At the conclusion of the hearing Legal Counsel for the Tenant requested permission to resubmit the documents that were served to the Tenant on October 28, 2014.

Rule 4.1 of the Residential Tenancy Branch Rules of Procedure stipulate that a respondent must be served on an applicant as soon as possible and at least five days before the dispute resolution proceeding. Although these documents were not served within five days of the commencement of the proceedings on August 25, 2014, I find it reasonable to accept the documents as evidence for these proceedings. I therefore grant the Tenant permission to provide the Residential Tenancy Branch with an exact copy of the evidence she served to the Landlord on October 28, 2014.

Rule 4.1(c) of the Residential Tenancy Branch Rules of Procedure stipulates that when a respondent's evidence is not served in accordance with the Rules of Procedure, I must consider ruled 11.5 when determining whether the evidence should be accepted.

Rule 11.5(a) of the Residential Tenancy Branch Rules of Procedure authorizes me to accept evidence that is not served in accordance with the Rules of Procedure if I am satisfied it is relevant. As some of the documents served to the Landlord on October 28, 2014 apparently relate to when the rental unit was vacated, which is an issue in dispute, I am satisfied the documents are relevant to these proceedings.

Rule 11.5(c) of the Residential Tenancy Branch Rules of Procedure authorizes me to refuse evidence if there has been a recurring or wilful failure to comply with the Rules of Procedure or if accepting the evidence prejudices the other party. Given that the Landlord was permitted to submit evidence after the hearing commenced on August 25, 2014, I find it entirely reasonable that the Tenant should also be permitted to submit evidence after the hearing commenced. I do not find that the Tenant has demonstrated a recurring or wilful failure to comply with the Rules of Procedure.

In granting permission for the Tenant to resubmit evidence to the Residential Tenancy Branch I was influenced, in part, by the fact that the Landlord declined the opportunity for an adjournment for the purposes of considering the evidence that was recently submitted. As the Landlord clearly indicated that he did not need more time to consider the documents, I cannot conclude that he will be unduly disadvantaged by considering this evidence.

At the conclusion of the hearing on November 04, 2014 the Tenant requested that the reconvened hearing be recorded. As there was insufficient time to discuss this request at the hearing, the parties were advised that the issue would be addressed in an interim decision.

Rule 9.1 of the Residential Tenancy Branch Rules of Procedure prohibit the private recording of a dispute resolution proceeding.

Rule 9.2 of the Residential Tenancy Branch Rules of Procedure stipulate that a party requesting an official recording by a court reporter must provide written notice stating the reasons for the request, to the other party and to the Residential Tenancy Branch, at least two business days in advance of the dispute resolution proceeding. The Rules of Procedure require me to grant or deny the request and to provide written reasons for my decision.

As I have not received a written request outlining the reasons for requesting an official recording, I am unable to make a determination on this matter. In the event either party wishes to request an official recording, the request should explain why the request was not made prior to the start of the proceeding on August 25, 2014. The request should also address why a recording of only a portion of the hearing should be permitted, given that testimony presented at the hearing on August 25, 2014 and November 04, 2014 would not be recorded.

A party making a request to record the hearing should be aware that they will be responsible for

- making arrangements for a court reporter to attend the teleconference hearing
- ensuring the court reporter has all of the necessary equipment to record the hearing
- paying the cost of the court reporter attending the hearing
- provide the other party with a copy of the recording and/or transcript.

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: November 05, 2014

Residential Tenancy Branch

