



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC FF

### Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by two named Applicants on August 7, 2015. The Applicants applied to obtain an Order to cancel a 1 Month Notice to end tenancy issued for cause and to recover the cost of the filing fee from the Landlords for this application.

The hearing was conducted via teleconference and was attended by two Landlords, the Tenant and the Tenant's son. Each person gave affirmed testimony.

I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

The application listed two Applicant Tenants; however, the written tenancy agreement submitted into evidence by each party was signed by each Landlord and only one Tenant, E.M. Based upon the aforementioned, I find T.M. does not meet the definition of a Tenant; rather he is an occupant. Thus, there is not a tenancy agreement in place between T.M. and the Respondent Landlords to which the *Residential Tenancy Act* applies. Accordingly, the style of cause was amended to remove T.M. as an applicant to this dispute, pursuant to section 64(3)(c) of the Act.

The hearing package contains instructions on evidence and the deadlines to submit evidence, as does the Notice of Hearing provided to the Tenants which states:

- 1. Evidence to support your position is important and must be given to the other party and to the Residential Tenancy Branch before the hearing. Instructions for evidence processing are included in this package. Deadlines are critical.*

Rule of Procedure 3.14 provides that documentary and digital evidence that is intended to be relied on at the hearing must be received by **the respondent and the RTB** not less than 14 days before the hearing. [My emphasis added with bold text]

Rule of Procedure 3.17 provide that the Arbitrator has the discretion to determine whether to accept documentary evidence that does not meet the requirements set out in the Rules of Procedure.

The Landlords affirmed receipt of the Tenant's Application and Notice of Hearing documents. They stated they did not receive documentary evidence from the Tenants.

The Tenant affirmed receipt of the Landlord's evidence. The Tenant raised no issues relating to service or receipt of that evidence.

The Tenant testified that she served their documentary evidence to the Residential Tenancy Branch (RTB). However, she did not serve copies of their evidence to the Landlords.

Based on the above, I find the Tenant's evidence was not served in accordance with Rule of Procedure 3.14. Therefore, I declined to consider the Tenant's documentary evidence, pursuant to Rule of Procedure 3.17. I did however consider the Tenant's oral submissions. The Landlords' documentary evidence had been served in accordance with the Rules of Procedure. Therefore, I considered the Landlords' documentary evidence and their oral submissions.

#### Issue(s) to be Decided

Have the parties agreed to settle these matters?

#### Background and Evidence

The parties entered into a written month to month tenancy agreement that began on January 15, 2015. Rent of \$950.00 is due on or before the first of each month and on January 1, 2012 the Tenants paid \$475.00 as the security deposit.

During the course of this proceeding the parties agreed to settle these matters.

#### Analysis

Pursuant to section 63 of the *Act*, the 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 on the following terms:

- 1) The Tenant agreed to withdraw their application for Dispute Resolution;
- 2) The Tenant agreed that the boat would be removed from the rental property no later than November 15, 2015;
- 3) The Tenant agreed to arrange the removal and pay all costs to have the boat removed from the rental property;
- 4) The parties agreed that if the boat was removed by November 15, 2015 the tenancy would continue until such time as it is ended in accordance with the *Act*;
- 5) The parties agreed that if the boat was not removed from the rental property by November 15, 2015 the tenancy would end upon service of the Order of Possession.
- 6) Each party agreed that the terms of this settlement agreement were reached by their own free will and without undue pressure or intimidation.

The parties agreed to settle these matters; therefore, I declined to award recovery of the filing fee.

### Conclusion

The parties agreed to settle these matters, pursuant to section 63 of the Act. In support of the settlement agreement, The Landlords have been issued an Order of Possession effective 2 days upon service.

If the terms of the settlement agreement are upheld by the Tenant and the boat is removed no later than **November 15, 2015** the Order of Possession will be void and of no force or effect. If the terms of the settlement agreement are not upheld and the boat remains on the property after November 15, 2015, then the Order of Possession will be in full force and effect after service upon the Tenant.

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 22, 2015

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Residential Tenancy Branch

