



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET

Introduction

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

- an early end to tenancy and an order of possession, pursuant to section 56.

The landlord's three agents, landlord OB ("landlord"), "landlord EM" and "landlord MD," and the tenant, the "tenant's wife," the tenant's wife's "lawyer," and two representatives from the Public Guardian and Trustee, agent SW ("PGT") and "agent MT," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Landlord MD and agent MT did not testify at this hearing. This hearing lasted approximately 49 minutes in order to allow both parties to fully present their submissions.

The landlord confirmed that she was the building manager for the landlord company named in this application and that she had authority to speak on its behalf. The tenant confirmed that his wife had authority to represent him as an agent, since he was ill and not fit to represent himself. The lawyer confirmed that she had authority to represent the tenant's wife only, as the tenant confirmed that he had not met with or spoken with the lawyer prior to the hearing. The PGT confirmed that she had authority to represent both the tenant and the tenant's wife at this hearing because they were both unable to represent themselves and she had certificates of incapability for both of them.

The tenant's wife, the lawyer, and the PGT confirmed receipt of the landlord's application for dispute resolution and notice of hearing.

The landlord claimed that she served the tenant with the landlord's written evidence package because he is the person named on the written tenancy agreement. The

tenant's wife confirmed receipt of the landlord's written evidence package. The lawyer could not confirm receipt of the landlord's written evidence package.

The landlord claimed that she served her written evidence package to the PGT as a courtesy on October 31, 2017, by way of email. The PGT could not confirm receipt of the written evidence package, despite attempts to locate it during the hearing.

Preliminary Issue – Proper Parties to be Named in Application and Notified of Hearing

Only the tenant was named as a respondent party in this application. The landlord did not name the PGT or anyone else. The landlord confirmed that she received an email, dated April 27, 2017, indicating that the tenant was not fit to enter into a tenancy agreement and that the PGT had responsibility for the tenant's legal affairs. The landlord provided a copy of this email with her application.

Given the testimony from the PGT and the email produced by the landlord from April 27, 2017, there is a question as to whether the tenant is fit to represent himself at this hearing, through his wife or his wife's lawyer. The PGT confirmed she had certificates of incapability for the tenant and his wife, but none were produced prior to this hearing.

As per section 6(1) of the *Act* (*my emphasis added*):

*The rights, obligations and prohibitions established under this Act are enforceable **between a landlord and tenant** under a tenancy agreement.*

Accordingly, I cannot confirm that the landlord has named the correct respondents in this application or that the correct respondents had notice of the landlord's written evidence in support this hearing.

As per Rule 3.2 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*, evidence relating to an early end to tenancy application is due to be served on the RTB the next day after filing online, and to the respondents at the time of serving the application, which is within three days of receiving the notice of hearing. The landlord's application was filed on October 25, 2017, yet some of its written evidence was produced to the RTB on November 3 and 9, 2017, well after the required deadline.

I notified the landlord that the correct parties must be named and have notice of this hearing and that the tenant's wife and her lawyer may not have authority to speak on behalf of the tenant. Although the PGT appeared at this hearing on behalf of the tenant,

they could not confirm receipt of the landlord's written evidence package, which was served improperly by email, and is not permitted under section 88 of the *Act*.

I advised both parties that I was dismissing the landlord's application with leave to reapply. I notified both parties that I could not provide any legal advice to them, as my role as an Arbitrator is to make a decision based on the landlord's application. I note that all participants in the hearing were confused as to who the correct parties were and who should have been served with the correct evidence. The hearing took 49 minutes because of this confusion.

I encouraged the landlord to seek independent legal advice in order to determine the correct parties to name in a future application, as well as who to serve and what legal methods to use for service. She claimed that a lawyer worked for the landlord company and she was in discussions with him. I informed her that she needed full, correct information prior to filing a new application and attending a future hearing, if she intended to pursue this matter further.

Conclusion

The landlord'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: November 27, 2017

Residential Tenancy Branch