



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding FAIR LABEL ENTERPRISES LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes** CNL

### **Introduction**

This hearing dealt with an application by the tenant, pursuant to the *Residential Tenancy Act*. The tenant applied to cancel the notice to end tenancy to end tenancy for landlord's use of property.

The landlord agreed that he had been notified of the hearing and had received the tenant's evidence in a timely manner. The landlord stated that he had given the tenant a copy of his evidence on November 20, 2018. The hearing was scheduled for November 22, 2018. The tenant acknowledged receipt of evidence submitted by the landlord but stated that she did not have adequate time to respond to the landlord's evidence.

### **Issues to be decided**

Did the landlord file evidence in compliance with the timelines set by the Rules of Procedure? Does the landlord have sufficient reason to end the tenancy?

### **Background and Evidence**

On September 26, 2018, the landlord served the tenant with a notice to end tenancy for landlord's use of property. The tenant applied to dispute the notice on October 10, 2018 which is within the legislated time frame of 15 days. The tenant testified that she received the landlord's evidence package on November 20, 2018 and did not have adequate time to provide a rebuttal. The landlord agreed that he had served the tenant with his evidence package just two days before the hearing.

### **Analysis**

Rule 3 of the *Residential Tenancy Branch Rules of Procedure* addresses serving the application and submitting and exchanging evidence.

Section 3.15 states that the respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the

Residential Tenancy Branch as soon as possible. Subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

Section 3.12 states that the arbitrator may refuse to accept evidence if the arbitrator determines that there has been a willful or recurring failure to comply with the Act, Rules of Procedure or an order made through the dispute resolution process, or if, for some other reason, the acceptance of the evidence would prejudice the other party or result in a breach of the principles of natural justice.

The purpose of serving evidence to the applicant in a timely manner is to respond to the applicant's evidence and to provide the applicant with an opportunity for rebuttal.

I find that the landlord has not provided sufficient reason why he could not have served evidence to the tenant in a timely manner and prior to November 20, 2018. In this case the tenant indicated that she would be rebutting some of the landlord's evidence. Since the tenant did not have adequate time to respond to the landlord's submissions, I am unable to consider the landlord's evidence during this proceeding.

Accordingly, I grant the tenant's application and dismiss the notice to end tenancy based on the landlord's failure to provide the tenant with a copy of his evidence in a timely manner and not based on the merits of the case.

### **Conclusion**

The notice to end tenancy is set aside and the tenancy will continue.

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 22, 2018

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Residential Tenancy Branch