



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on March 10, 2020 (the “Application”). The Tenants applied to dispute a One Month Notice to End Tenancy for Cause dated March 07, 2020 (the “Notice”).

The Tenant attended the hearing. Nobody attended the hearing for the Landlords.

The Tenant advised at the outset that the matter had been resolved and the parties have signed a Mutual Agreement to End a Tenancy effective August 31, 2020. The Tenants had uploaded this indicating the parties had reached a mutual agreement on the dispute and no longer require the process.

Rule 5.0.1 of the Rules of Procedure (the “Rules”) states:

Where a tenant has applied to dispute a landlord’s notice to end tenancy, the applicant tenant requires the written consent of the landlord to withdraw their application...

Given rule 5.0.1 of the Rules, I went through some preliminary matters with the Tenant. I explained the matters that would be addressed. The Tenant provided affirmed testimony.

The Tenants submitted evidence prior to the hearing. The Landlords did not. I addressed service of the hearing package and Tenants’ evidence.

The Tenant testified that a copy of the Application and the evidence were posted to the door of the Landlords’ residence March 16, 2020. The Tenant testified that the rental

unit address is a house where the Tenants live in the lower suite and the Landlords live upstairs.

The Tenant testified that when the Tenants received the hearing package from the RTB, they tried to serve it on the Landlords in person, but the Landlords would not allow this given the current pandemic. The Tenant testified that the Landlords told the Tenants they could post the hearing package on the door and they did post it on the door of the Landlords' residence March 21, 2020.

Section 89(1) of the *Residential Tenancy Act* (the "Act") sets out how an Application for Dispute Resolution must be served. This section does not allow the hearing package to be posted on the door of the respondent's residence. Posting the hearing package on the door of the respondent's residence is permitted under section 89(2) of the *Act* in relation to a landlord's request for an Order of Possession. It is also permitted under section 88 of the *Act* in relation to serving evidence.

Section 71(2) of the *Act* states:

(2) In addition to the authority under subsection (1), the director may make any of the following orders...

(b) that a document has been sufficiently served for the purposes of this Act on a date the director specifies;

(c) that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act.

Section 90(c) of the *Act* deems documents posted to a door served three days after posting.

I accept the undisputed testimony of the Tenant about service of the hearing package. I had no concerns about the reliability or credibility of the Tenant's testimony. Pursuant to section 71(2) of the *Act*, I am satisfied the hearing package was sufficiently served. I find this in these very specific circumstances where the Tenants tried to serve in person, the Landlords would not allow this given the current pandemic and the Landlords told the Tenants they could post the hearing package to the door. I also allow it because posting documents to the door is permitted under section 88 and 89(2) of the *Act* as a form of service. Pursuant to section 71(2) of the *Act*, and considering section 90(c) of the *Act*, I am satisfied the Landlords received the hearing package March 24, 2020. I

find the hearing package was served in sufficient time to allow the Landlords to prepare for, and appear at, the hearing.

I told the Tenant during the hearing that I would make a decision on service in my written decision. I told the Tenant that, assuming I was satisfied of service, the Tenant could withdraw the Application if he wanted to or proceed with the Application in which case I would cancel the Notice as, pursuant to rule 6.6 of the Rules, the Landlords have the onus to prove the Notice and did not appear to prove the Notice.

The Tenant advised that he wanted to withdraw the Application. I understood this to be because the parties have come to an agreement about this matter which is reflected in the Mutual Agreement to End a Tenancy effective August 31, 2020.

I allow the Tenant to withdraw the Application. I acknowledge rule 5.0.1 of the Rules and the requirement for the Landlords' consent. However, the Landlords did not appear at the hearing to prove the Notice or seek an Order of Possession based on the Notice. The hearing lasted 24 minutes without an appearance by the Landlords. In these specific circumstances, I find it appropriate to allow the Tenant to withdraw the Application on the basis that the parties have reached an agreement resolving the issue.

The Application is withdrawn at the request of the Tenant.

Conclusion

The Application is withdrawn at the request of 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 *Act*.

Dated: April 23, 2020

Residential Tenancy Branch