



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Delaney Properties Ltd. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for an order to cancel a One Month Notice To End Tenancy for Cause pursuant to sections 47 and 55.

The landlord and both of the tenants attended the hearing. Co-tenant, NK ("tenant") represented both tenants. As both parties were present, service of documents was examined. The landlord testified she was not served with the Notice of Dispute Resolution Proceedings or any evidence by the tenant. The landlord was sent an email by the tenant advising her that there is a hearing before the Residential Tenancy Branch on today's date. The landlord contacted the Residential Tenancy Branch and was provided with the details about the hearing. She was not provided with the access code to upload evidence in anticipation of this hearing.

The tenant acknowledged she did not serve the landlord with the Notice of Dispute Resolution Proceedings or Application for Dispute Resolution. The tenant testified that

- a) she either didn't know it was her responsibility to serve the respondent/landlord with the Notice of Dispute Resolution Proceedings;
- b) she didn't understand what she was required to do;
- c) that she was not given instructions to serve the landlord when the Residential Tenancy Branch when the Notice of Hearing was emailed to her.
- d) the email from the Residential Tenancy Branch is on her daughter's email and she doesn't have access to it at the moment.

I advised the parties that rule 3.1 of the Residential Tenancy Branch Rules of Procedures states:

The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- b) the Respondent Instructions for Dispute Resolution;
- c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and
- d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].

Rule 3.5 states:

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the *Act* and these Rules of Procedure.

Section 89 of the Residential Tenancy *Act* states:

89 Special rules for certain documents

(1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

As the tenant acknowledged she did not serve the landlord with the Application for Dispute Resolution, I advised the parties the tenant's application would be dismissed without leave to reapply. After some discussion between the parties, the landlord and the tenant agreed that this dispute could be resolved by settlement.

Settlement Reached

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, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding settlement of all issues currently under dispute at this time:

1. By mutual agreement, the tenancy will end on May 31, 2020 at 1:00 p.m. by which time the tenants and any other occupant will have vacated the rental unit.
2. Both parties agree that this tenancy ends by way of this agreement and the One Month Notice is cancelled and of no further force or effect.
3. The rights and obligations of the parties under the *Act* continue until the tenancy ends in accordance with this agreement.
4. This settlement comprises the full and final settlement of the tenant's application.

Each party testified that they understood and agreed to the above terms, free of any duress or coercion. Both parties testified that they understood and agreed that the above terms are legal, final, binding and enforceable, which settle all aspects of this dispute.

Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue an Order of Possession to the landlord. The landlord is to serve this Order of Possession immediately and enforce it as early as 1:01 PM on May 31, 2020 should the landlord choose to do so.

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: May 07, 2020

Residential Tenancy Branch