



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX CITY REALTY and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution, filed on April 9, 2020, wherein the Tenants sought to cancel a 1 Month Notice to End Tenancy for Cause issued on March 27, 2020 (the "Notice").

The hearing of the Tenants' Application was scheduled for teleconference at 9:30 a.m. on May 29, 2020. Only the Tenants called into the hearing. The Landlord did not attend this hearing, although I left the teleconference hearing connection open until 9:41 a.m.

I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenants and I were the only ones who had called into this teleconference.

As the Landlord failed to call into the hearing I considered service of the Tenants' Hearing package. The Tenant stated that they served the Landlord with Notice of the Hearing, their Application for Dispute Resolution and all their evidence in support of their claim, by email on 10:44 p.m. on April 11, 2020.

By Directors Order signed March 30, 2020, email service is permitted under the *Residential Tenancy Act* in the following circumstances:

- the document is emailed to the email address of the person to whom the document is to be given or served, and that person confirms receipt of the document by way of return email in which case the document is deemed to have been received on the date the person confirms receipt;

- the document is emailed to the email address of the person to whom the document is to be given or served, and that person responds to the email without identifying an issue with the transmission or viewing of the document, or with their understanding of the document, in which case the document is deemed to have been received on the date the person responds; or
- the document is emailed to the email address that the person to whom the document is to be given or served has routinely used to correspond about tenancy matters from an email address that the person giving or serving the document has routinely used for such correspondence, in which case the document is deemed to have been received three days after it was emailed

The Tenant, J.S., testified that they routinely used email for correspondence with the Landlord relating to their tenancy. The Tenants also provided in evidence copies of numerous emails with the Landlord's representatives confirming they routinely communicated with the Landlord by email. On this basis, I find that the Landlord was duly served with notice of the hearing on April 14, 2020, three days after the email was sent.

Rules 7.1 and 7.3 of the *Residential Tenancy Branch Rules of Procedure* provide as follows:

Commencement of Hearing:

The hearing must commence at the scheduled time unless otherwise decided by the arbitrator.

Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

As I have found the Landlord was served with Notice of this hearing, I proceeded with the hearing in their absence.

The Tenant testified that their business has been dramatically affected by the COVID-19 pandemic. They have applied for financial relief and financial support from the various levels of government as well as financial institutions. The Tenant stated that they have been able to make some payments to the Landlord and reached an agreement with the Landlord's representative regarding the payment of arrears of rent. The terms of that agreement were set out in some of the email communication provided in evidence before me.

Although an agreement was reached with the Landlord regarding the payment of rental arrears, the hearing was not cancelled, and the Tenants did not withdraw their Application. The Tenants confirmed that they called into the hearing to ensure the Landlord did not take any further steps to enforce the Notice.

Residential Tenancy Branch Rules of Procedure—Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy the landlord bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy.

As the Landlord failed to call into the hearing, I find the Landlord has not met the burden of proving the reasons for issuing the Notice. **I therefore grant the Tenants' Application to cancel the Notice.** The tenancy shall continue until ended in accordance with the *Residential Tenancy Act*.

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 29, 2020

Residential Tenancy Branch