



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

ERP, FFT

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for an Order requiring emergency repairs and to recover the fee for filing this Application for Dispute Resolution.

Agent for the Tenant stated that on August 14, 2020 the Dispute Resolution Package and evidence the Tenant submitted to the Residential Tenancy Branch in August of 2020 were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and the evidence submitted in August was accepted as evidence for these proceedings.

On September 14, 2020 the Tenant submitted additional evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was attached to the front door of the service address provided to him by the Landlord on a Notice to End Tenancy that was served to him on August 30, 2020. The Agent for the Landlord acknowledged providing this address as a service address on that Notice to End Tenancy. The Agent for the Landlord and the Tenant agree that the service address provided on the Notice to End Tenancy is a restaurant.

The Tenant stated that the restaurant was closed when he posted the evidence on September 14, 2020. The Agent for the Landlord stated that the Landlord did not receive the evidence that was allegedly posted on the door of the restaurant.

On the basis of the testimony of the Tenant, I accept that he served evidence to the Landlord by posting it on the door of a restaurant located at an address used by the Landlord as a service address. I therefore find that these documents were served in accordance with section 88(c) of the *Residential Tenancy Act (Act)*.

On the basis of the testimony of the Agent for the Landlord, I accept that the documents posted on the restaurant door were not received. I find it highly likely that documents posted on the door of a restaurant that is closed could be removed by a third party and not subsequently delivered to the Landlord.

Rule 10.2 of the Residential Tenancy Branch Rules of Procedure requires a party applying for an expedited hearing to submit all evidence that intend to rely on at the hearing with the Application for Dispute Resolution. As the Tenant submitted additional evidence on September 14, 2020, it is clear he did not comply with this rule.

Rule 10.3 of the Residential Tenancy Branch Rules of Procedure requires a person applying for an expedited hearing to serve all evidence to the other party with the Application for Dispute Resolution. Rule 10.4 of the Residential Tenancy Branch Rules of Procedure requires a person applying for an expedited hearing to serve all evidence to the other party in a single complete package. As the Tenant served the Application for Dispute Resolution and some evidence to the Landlord on August 14, 2020 and he posted additional evidence on the Landlord's door on September 14, 2020, it is clear he did not comply with these rules.

Rule 10.5 of the Residential Tenancy Branch Rules of Procedure requires a person applying for an expedited hearing to serve all evidence to the other party as soon as possible and at least two days before the hearing.

Section 90 of the *Act* stipulates that a document that is served by posting it on the door is deemed received on the third day after if it is posted. The evidence the Tenant posted on September 14, 2020 would be deemed served on September 17, 2020. Even if the Landlord acknowledged receipt of the Tenant's evidence on September 17, 2020, I would conclude that it was not served in accordance with the timeline established by rule 10.5 of the Residential Tenancy Branch Rules of Procedure

Rule 10.6 of the Residential Tenancy Branch Rules of Procedure stipulates that if a piece of evidence is not available when the applicant serves their evidence, I must apply rule 3.17.

The Tenant stated that the evidence served to the Landlord on September 14, 2020 was not served in a timelier manner because he "did not find it" until September 10, 2020. He stated that he believes some of the evidence he submitted was included in the first evidence package served to the Landlord.

Rule 3.17 of the Residential Tenancy Branch Rules of Procedure stipulates that evidence not provided to the other party in accordance with rule 10 may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence.

On the basis of the testimony of the Tenant, I find that the evidence he submitted to the Residential Tenancy Branch on September 14, 2020 was available, or could have been available with reasonable diligence, when he filed this Application for Dispute Resolution. I find that his testimony that he simply could “not find it” is not sufficient reason for delaying service of the evidence. In any event, I find that delaying service of that evidence until September 14, 2020 was unreasonable, given that the Tenant located the evidence on September 10, 2020.

Rule 3.17 of the Residential Tenancy Branch Rules of Procedure grants me the discretion to determine whether to accept evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice. Given that that the Tenant did not diligently search for all available evidence and he unreasonably delayed the service of evidence he eventually located on September 10, 2020, I find that any evidence he submitted to the Residential Tenancy Branch on September 14, 2020 should not be accepted as evidence, unless it was accepted as evidence with the initial evidence package submitted. I find it would be decidedly unfair to the Landlord to consider this evidence, given that he does not acknowledge receiving it.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each party present at the hearing affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

Issue(s) to be Decided:

Is there a need to order the Landlord to make emergency repairs?

Background and Evidence:

After considerable discussion regarding the need for emergency repairs in the rental unit, the Tenant and the Agent for the Landlord mutually agreed to settle all issues in dispute at these proceedings. As the parties reached a settlement agreement, the details of the evidence presented by the parties is not recorded here.

The Agent for the Landlord and the Tenant mutually agreed to settle all issues in dispute at these proceedings and all issues in dispute regarding this tenancy in any other proceedings currently before the Residential Tenancy Branch under the following terms:

- The tenancy will end, by mutual agreement, on October 31, 2020;
- The Tenant will not be required to pay rent for October of 2020; and
- The Application for Dispute Resolution filed by the Tenant is cancelled (Residential Tenancy Branch file number recorded on the first page of this decision).

This agreement was summarized for the parties on at least two occasions. The Tenant and the Agent for the Landlord both clearly indicated that they agreed to resolve this dispute under these terms.

The Tenant and the Agent for the Landlord both acknowledged that they understand they were not required to enter into this agreement and that they understood the agreement was final and binding.

Analysis:

I find that all issues in dispute at these proceedings have been settled in accordance with the aforementioned settlement agreement.

Conclusion:

In accordance with the aforementioned settlement agreement, the Landlord is granted an Order of Possession, which requires the Tenant to vacate the rental unit by 1:00 p.m. on October 31, 2020.

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: September 17, 2020

Residential Tenancy Branch