



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CRYSTAL RIDGE MANOR
LTD. and [tenant name suppressed to protect
privacy]

DECISION

Dispute Codes

OJT, CNC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- A determination on whether the Residential Tenancy Branch has jurisdiction over the tenancy;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

Both parties attended the hearing via conference call and provided affirmed testimony. The tenant's agents/sons attended on behalf of the named tenant. The landlord's agents attended on behalf of the named landlord. Both parties confirmed the tenant served the landlord with the notice of hearing package via Canada Post Registered Mail on August 25, 2020. The tenant stated that the landlord was served with the 5 uploaded evidence files via Canada Post Registered Mail on September 29, 2020. The landlord confirmed receipt of the package on October 1, 2020. The landlord argued that with just one day before the hearing, the landlord is unable to properly prepare and respond to this late evidence. The tenant stated that they had only issued this evidence in response to the landlord's late evidence package served on September 28, 2020. The landlord stated that their uploaded evidence of 11 files were served in two separate packages to the tenant. The first package identified during the hearing as 3 sets of letters and a behavioural list were served on September 8, 2020 in person to the tenant. The tenant confirmed that this was received but argues that this was evidence submitted regarding a different hearing that was held on September 21, 2020. The second package identified during the hearing consisted of a general list, letter from a resident, emails, proof of service document, behaviour list were served to the tenant in person on September 28, 2020. The landlord clarified later that the additional document

a copy of a previous Residential Tenancy Branch Decision involving the landlord and a different tenant was not served.

I find that the tenant's late evidence package of 5 files is excluded from consideration in this hearing. The tenant confirmed that this evidence was strictly rebuttal of the landlord's late evidence package of September 28, 2020. I find that in the interest of fairness and natural justice that the tenant's evidence would be prejudicial to the landlord.

I find that the landlord's initial evidence package served September 8, 2020 is deemed served to the tenant. Although the tenant confirmed receipt of the package, the tenant argued that this package was to be used in the previous hearing. I also note during the hearing that neither party made reference to this evidence.

I find that the landlord's second late evidence package is excluded from consideration in this hearing. Although the tenant confirmed receipt of this package the landlord stated that there was no particular reason why the late submission was made. The landlord also confirmed that 1 file, a copy of a previous Decision from the Residential Tenancy Branch was not served due to privacy issues. On this basis, I find with no particular reason for the late submission by the landlord and the lack of service on 1 particular evidence file that it would be prejudicial to the tenant to allow. In the interest of fairness and natural justice this portion of the landlord's evidence is excluded from consideration in this hearing.

Preliminary Issue

At the outset, the tenant's request if the Residential Tenancy Branch has jurisdiction was clarified. The applicant seeks a determination whether the Residential Tenancy Act applies to his tenancy. The applicant provided written details which states, "Renting a room at an assisted living home at ..." The tenant confirmed in his direct testimony that the Residential Tenancy Branch Jurisdiction is not being challenged by the tenant. As such, this portion of the tenant's application is cancelled as it was made in error by the tenant.

The landlord has argued that the Residential Tenancy Branch does not have jurisdiction. The landlord argued that based upon another previous decision of the Residential Tenancy Branch involving the landlord and another tenant, the Residential Tenancy Branch does not have jurisdiction. The landlord also argued that the landlord is licensed by Fraser Health. The tenant has disputed this claim.

Section 4 of the Act states in part,

This Act does not apply to

Living accommodation

- (i) In a community care facility under the Community Care and Assisted Living Act,*
- (ii) In a continuing care facility under the Continuing Care Act,*
- (iii) In a public or private hospital under the Hospital Act,*
- (iv) If designated under the Mental Health Act, in a Provincial mental health facility, an observation unit or a psychiatric unit,*
- (v) In a housing based health facility that provides hospitality support services and person health care, or*
- (vi) That is made available in the course of providing rehabilitative or therapeutic treatment or services,*

The landlord has argued that the Residential Tenancy Branch does not have jurisdiction due to a previous Residential Tenancy Branch Decision in which a finding was made involving this landlord and a different tenant and that the landlord is licensed under Fraser Health, I find that the landlord has failed to provide sufficient evidence to satisfy me. The landlord did not provide any other details in their submissions. The tenant disputed this claim. I find on a balance of probabilities that the landlord has failed to establish a claim that the Residential Tenancy Branch does not have jurisdiction. The hearing shall proceed on the tenant's application.

Issue(s) to be Decided

Is the tenant entitled to an order to cancel a 1 month notice?

Background, Evidence and Analysis

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed the landlord served a letter dated July 30, 2020 "re: Your Tenancy at ..." (Named Landlord facility). It states,

Please accept this letter as 30 Days Notice to vacate the room you currently occupy at... is an Independent Living Home and as a result of your increasing care needs, we

are no longer able to provide a safe environment for you. Over the last few weeks, you have demonstrated significant intrusiveness, wandering, and stalking of other residents which has been very challenging for our residents as well as for us to manage. We feel your level of care exceeds what we are able to provide safely...

Section 52 (e) of the Act states in part that in order to be effective, a notice to end tenancy must be in writing and must when given by a landlord, be in the approved form. Based upon the submissions of both parties the landlord issued a letter dated July 30, 2020 instead of an approved form. On this basis, the tenant's application is granted. The letter dated July 30, 2020 is of no force and effect. The tenancy shall continue.

Conclusion

The tenant's application to cancel the landlord's notice is granted.

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: October 02, 2020

Residential Tenancy Branch