



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 in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause.

The Tenant stated that on October 27, 2020 the Dispute Resolution Package and evidence he submitted to the Residential Tenancy Branch in October were sent to both Respondents, via registered mail. The Agent for the Landlord stated that the Landlord received these documents and that she is representing all named Respondents at these proceedings. As the Agent for the Landlord acknowledged receiving the evidence, it was accepted as evidence for these proceedings.

On December 29, 2020 the Tenant submitted evidence to the Residential Tenancy Branch, which included audio files. The Tenant stated that:

- this evidence was served to an agent for the Landlord on a USB device;
- when the evidence was served to the agent for the Landlord, she assured him he would be able to access the files on the USB device;
- he did not contact the Landlord after serving this evidence to determine whether the audio files on the device could be accessed.

The Agent for the Landlord stated that the Landlord received the evidence served in December, however the Landlord was unable to access the audio files.

The parties were advised that I was also unable to access the audio files submitted in evidence in December of 2020.

Rule 3.10.5 of the Residential Tenancy Branch Rules of Procedure stipulates that the format of digital evidence must be accessible to all parties. This rule requires a party submitting digital to confirm that the other party has playback equipment or is otherwise

able to gain access to the evidence. Although I accept the Tenant's testimony that the agent for the Landlord who received his USB device assured the Tenant that she could access the information on the device, I find that he should have followed up to ensure that all files on that device could be accessed.

As neither I nor the Agent for the Landlord were able to access the audio files on the USB device, I find they should not be accepted as evidence for these proceedings.

On January 06, 2021 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was personally served to the Tenant on January 06, 2021. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The participants affirmed that they would speak the truth, the whole truth, and nothing but the truth at these proceedings.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

Background and Evidence

Prior to discussing any of the merits of the Application for Dispute Resolution, the Tenant and the Agent for the Landlord mutually agreed to resolve all issues in dispute at these proceedings under the following terms:

- the Landlord will withdraw the One Month Notice to End Tenancy for Cause that is the subject of these proceedings;
- the tenancy will continue;
- the Tenant agrees to stop posting anything in the building or on the residential property; and
- the Tenant agrees to treat all residents and employees with respect in the future.

This agreement was summarized for the parties on at least two occasions. Each party clearly indicated that they agreed to resolve this dispute under these terms.

The parties each acknowledged that they understood they were not required to enter into this agreement and that they were doing so on their own free will.

The parties each acknowledged that they understood the agreement was final and binding.

Analysis

The Tenant and the Agent for the Landlord mutually agreed to settle all issues in dispute at these proceedings under the aforementioned terms.

Conclusion

On the basis of the aforementioned settlement agreement, the One Month Notice to End Tenancy for Cause is withdrawn, and this tenancy continues in accordance with the terms of the settlement agreement.

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: January 14, 2021

Residential Tenancy Branch