



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes CNL, Jurisdiction

Introduction

On January 26, 2021, the Applicants submitted an Application for Dispute Resolution (original application) under the *Residential Tenancy Act* (the “Act”) requesting to cancel a Two Month Notice to End Tenancy for Landlord’s Use. The matter was set for a participatory hearing via conference call.

On April 23, 2021, a participatory hearing was held via conference call and resulted in a Decision, dated April 27, 2021.

Respondent RLC applied for a Review Consideration of the Decision, dated April 27, 2021, which resulted in a Review Consideration Decision, dated May 10, 2021, that included an order for a new hearing of the original application and that the Decision issued on April 27, 2021 be suspended.

The May 10, 2021 Review Consideration Decision also included an order for the Respondent RLC, who was the Review Applicant, to “... serve the tenants with a copy of this review decision and a copy of the notice hearing, within 3 days of receipt of this (Review Consideration) Decision.”

The May 10, 2021 Decision also included an order for the Applicants (Review Respondents) to “serve the landlord a copy of their original application and all evidence submitted for the original hearing, within 3 days of receipt of this Decision.”

The May 10, 2021 Review Consideration Decision was mailed to Respondent RLC on May 19, 2021.

Preliminary Matter - Service

The Landlord and the Tenants attended the new hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing.

When questioned whether they served the Applicants with a copy of the review decision and a copy of the notice hearing, in accordance with the Review Consideration Decision dated May 10, 2021, the Respondent RLC stated they did not receive any review decision and did not serve the Applicants with a copy of the Notice of Review Hearing. The Applicants agreed that they had not been served.

When asked if they served their evidence packages to the Applicants, Respondent RLC stated they didn't serve anything to the Respondents.

The Applicants stated they hand delivered their evidence package to Respondent RLC on May 21, 2021. Respondent RLC stated that she did not receive anything from the Applicants. The Applicants submitted a video that showed the delivery of an envelope to the Respondent RLC at her home.

Based on the above evidence, I find that Respondent RLC failed to serve both the Notice of Review Hearing and her evidence package to the Applicants, pursuant to the *Rules of Procedure 3.1* and *3.5*.

Preliminary Matter - Conduct

I asked Respondent RLC, several times during the start of the hearing, to stop interrupting both the other party and me while we were speaking. Respondent RLC seemed to have a difficult time allowing other parties to speak during the hearing and after several warnings, I advised Respondent RLC that I may have to mute them at various points during the hearing if the interruptions continued, pursuant to *Rules of Procedure 6.10*.

Respondent RLC continued to interrupt; therefore, I muted Respondent RLC while reviewing the hearing process with the parties and then unmuted RLC to ask if they had any questions and to confirm that they understood they were legally obligated to speak the truth. I muted Respondent RLC a second time when the Applicants were providing testimony about their service of evidence to RLC.

Analysis

During my review of the related evidence for this hearing, I have established that the dispute is between family members. The issue is whether the Applicants are tenants in a rental unit versus whether the Applicants have a legal interest in the property and therefore, are not considered to be in a tenant/landlord relationship with Respondent RLC.

The original hearing was scheduled after the Applicants applied to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property. Before assessing the validity of

the 2 Month Notice, the original arbitrator had to address the jurisdiction of the Residential Tenancy Branch and did so in their Decision, dated April 27, 2021. Since then, Respondent RLC successfully applied for a new hearing.

In this case, I find that Respondent RLC failed to serve the Applicants the Notice of Review Hearing as ordered by the arbitrator in their Review Consideration Decision dated May 10, 2021. As such, I am unable to hear this Application.

The original decision was suspended pending the outcome of this hearing and I've found that I'm unable to proceed with this hearing based on Respondent RLC's failure to serve the Notice of Review Hearing to the Applicant's. As such, I find that the original Decision, issued on April 27, 2021, is reinstated.

Conclusion

As this Review Hearing has completed, I order that the Decision issued on April 27, 2021 is reinstated.

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 15, 2021

Residential Tenancy Branch