



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution, seeking remedy under the *Residential Tenancy Act* (the Act) for an order to end the tenancy early and to receive an order of possession, due to health or safety issues under section 56 of the Act.

The landlord and tenant attended the teleconference hearing. The parties were provided the opportunity to provide affirmed testimony and were provided the opportunity to present evidence submitted in accordance with the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) and makes submissions to me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Regarding evidence, the tenant raised the issue of late evidence served on the tenant on October 14, 2021, which was received by the RTB on October 15, 2021. The parties were of RTB Rule 10.2, which states:

10.2 Applicant's evidence for an expedited hearing

An applicant must submit all evidence that the applicant intends to rely on at the hearing with the Application for Dispute Resolution.

Based on the above, the parties were advised that the landlord's second documentary package of documents was being excluded in full as RTB Rule 10.2 requires all evidence that the applicant intends to rely on at the hearing to be submitted with the application.

Regarding the tenant's documentary evidence, the tenant provided a registered mail tracking number, which has been included on the style of cause for ease of reference. According to the Canada Post online registered mail website, the tenant mailed their

documentary evidence on October 7, 2021, and the notice card was delivered on October 8, 2021 and that the package remains available for pickup. The landlord stated that they went to Germany on October 4, 2021, and there is no evidence before me that the tenant was advised that the landlord went to Germany. As a result, I find the landlord was sufficiently served as of October 12, 2021, pursuant to section 90 of the Act.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Issue to be Decided

- Is the landlord entitled to end the tenancy early and obtain an order of possession for health or safety purposes under the Act?

Background and Evidence

During the hearing, the landlord disconnected a total of 3 times. The first time was at 9:40 a.m. Pacific Standard Time (PST). The landlord reconnected at 9:42 a.m. PST and the hearing continued. At 9:55 a.m. PST, the landlord once again disconnected from the hearing and reconnected at 9:58 a.m. PST, and the hearing continued. At 10:11 a.m. PST, the landlord disconnected from the hearing again and after waiting for 5 minutes, the hearing concluded as the landlord failed to reconnect to the hearing, which I will address below.

Analysis

Based on the documentary evidence and the testimony during the hearing and on a balance of probabilities, I find the following.

RTB Rule 7.3 applies and states the following:

7.3 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.**

[Emphasis added]

Based on the landlord disconnecting the third time at 10:11 a.m. PST, and not calling back into the hearing after a reasonable waiting period of 5 minutes, the landlord's application was dismissed without leave to reapply. I exercise my discretion pursuant to RTB Rule 7.3 to dismiss the landlord's application and to not grant leave to reapply as the landlord was aware of the hearing and failed to attend for the entirety of the hearing. Furthermore, the landlord in the matter has the burden of proof and not the tenant, and as a result I find the landlord has failed to meet the burden of proof as the landlord disconnected from the hearing and failed to remain in the hearing until it was concluded.

Given the above, I find it is not necessary to address any of the documentary evidence presented due to the landlord disconnecting from the hearing.

I dismiss the landlord's application pursuant to RTB Rule 7.3 without leave to reapply.

The filing fee is not granted as this application has been dismissed.

The tenant shall continue until ended in accordance with the Act.

Conclusion

The landlord's application fails and is dismissed pursuant to RTB Rule 7.3.

The tenancy shall continue until ended in accordance with the Act.

This decision will be emailed to the parties at the email addresses confirmed by the parties during the hearing.

The filing fee is not granted as noted above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 18, 2021

Residential Tenancy Branch