



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlords on December 02, 2021 (the "Application"). The Landlords applied for an order ending the tenancy early pursuant to section 56 of the *Residential Tenancy Act* (the "Act").

The Landlords appeared at the hearing with the Articled Student and Legal Counsel. The Tenant appeared at the hearing with their mother for support. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The Landlords and Tenant provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Tenant confirmed receipt of the hearing package and Landlords' evidence. The Tenant testified that they received the Landlords' evidence December 08, 2021.

The Articled Student advised that the Landlords received the Tenant's evidence December 19th and 20th. The Articled Student took issue with late service of the evidence because the Landlords had not had a chance to look at the evidence.

The Tenant testified that their evidence was sent to the Landlords by registered mail on December 15, 2021.

This was an expedited hearing and rule 10 of the Rules applies.

Pursuant to rule 10.3 of the Rules, the Landlords had one day from the hearing package being made available by the RTB to serve the Tenant with the hearing package and

their evidence. The hearing package was made available December 07, 2021 and the Landlords served the hearing package and their evidence December 08, 2021, within time.

Pursuant to rule 10.5 of the Rules, the Tenant had to serve their evidence on the Landlords “at least two days before the hearing” meaning the service date and hearing date are excluded from the calculation (see the definition of “Days” in the Rules). The Tenant testified that they sent their evidence by registered mail to the Landlords December 15, 2021. Pursuant to section 90(a) of the *Act*, registered mail is deemed received five days after it is sent unless the receiving party receives it earlier. Here, the Landlords received the Tenant’s evidence December 19th and 20th and the deemed receipt provision does not apply. December 19th and 20th are not “at least two days before the hearing” and therefore the Tenant’s evidence was served late.

Pursuant to rule 3.17 of the Rules, I heard the parties on whether the Tenant’s evidence should be admitted or excluded. The Articled Student submitted that the evidence should be excluded because the Landlords have not had an opportunity to look at it or consider it. The Tenant submitted that the evidence should be admitted because it includes proof against the Landlords’ claims.

Pursuant to rule 3.17 of the Rules, I excluded the Tenant’s evidence as I found it would be unfair to the Landlords to consider it when they have not had an opportunity to review it and therefore could not respond to it at the hearing.

A written tenancy agreement was submitted in evidence and the parties agreed it is accurate. The tenancy started July 06, 2021.

During the hearing, I explained the settlement option to the parties pursuant to section 63 of the *Act* which allows an arbitrator to assist the parties to settle the dispute.

I explained the following to the parties. Settlement discussions are voluntary and neither party has any obligation to discuss settlement. If one party does not want to discuss settlement, that is fine, I will hear and decide the matter. If the parties choose to discuss settlement and do not come to an agreement, that is fine, I will hear and decide the matter. If the parties do come to an agreement, I will write out the agreement in my written decision which becomes a final and legally binding agreement which the parties cannot change their mind about later.

The parties discussed settlement and came to an agreement.

Prior to ending the hearing, I confirmed the terms of the settlement agreement with the parties. I told the parties I would issue an Order of Possession. I confirmed with the parties that all issues had been covered. The parties confirmed they were agreeing to the settlement voluntarily.

Settlement Agreement

The Landlords and Tenant agree as follows:

1. The tenancy will end, and the Tenant will vacate the rental unit, no later than 1:00 p.m. on January 15, 2022.
2. All rights and obligations of the parties will continue until the tenancy ends at 1:00 p.m. on January 15, 2022.

This agreement is fully binding on the parties and is in full and final satisfaction of this dispute.

The Landlords are issued an Order of Possession for the rental unit which is effective at 1:00 p.m. on January 15, 2022. If the Tenant fails to vacate the rental unit in accordance with the settlement agreement set out above, the Landlords must serve the Tenant with this Order. If the Tenant fails to vacate the rental unit in accordance with the Order, the Order may be enforced in the Supreme Court as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: December 21, 2021

Residential Tenancy Branch