



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, OLC, FFT**

Introduction

This hearing dealt with an application pursuant to the Residential Tenancy Act (“Act”) for orders as follows:

- cancellation of the landlords’ One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47
- for an order requiring the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62
- reimbursement of the filing fee pursuant to section 72

Both parties, the applicant KA, and the respondent SC attended the hearing. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

Both parties confirmed they were not recording the hearing pursuant to RTB Rule of Procedure 6.11. The parties were affirmed.

The respondent acknowledged receipt of the dispute notice dated October 6, 2022 by registered mail and was therefore served in accordance with section 89 of the Act. She stated that she did not receive the applicant’s evidence in support of the application and the applicant confirmed that the evidence was not included in the package sent by registered mail. The respondent did not provide or serve any evidence in response to the dispute notice. The applicant did not serve the evidentiary package in accordance with section 88 of the Act. Rule 3.1 of the RTB Rules of Procedure states in part:

The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- b) the Respondent Instructions for Dispute Resolution;
- c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and
- d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [*Documents that must be submitted with an Application for Dispute Resolution*].

Rule 3.17 of the RTB Rules of Procedure states in part:

Evidence not provided to the other party and the Residential Tenancy Branch directly or through a Service BC Office in accordance with the Act or Rules 2.5 [*Documents that must be submitted with an Application for Dispute Resolution*], 3.1, 3.2, 3.10.5, 3.14 3.15, and 10 may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence.

The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.

The number of documents provided by the applicant in evidence but not served on the respondent is significant. Further the dispute notice itself contains instructions on what documents must be served on the respondent. The applicant failed to follow the instructions and I find that it would be unfair to the applicant to consider evidence that she has not had an opportunity to review. I therefore exercise my discretion under the RTB Rules of Procedure and decline to accept the applicant's documentary evidence. I will however consider certain pieces of documentary evidence that were referred to by both parties in the hearing where I have satisfied myself that both parties are familiar with those documents.

Preliminary Issue – Jurisdiction

The written agreement between the applicant and the respondent was referred to by both parties and I will consider that document. It is entitled “Room Rental Agreement”. Both parties agree that the applicant commenced occupying a room in the respondent’s residence on September 17, 2021. The Room Rental Agreement covers the period from July 1, 2022 to December 31, 2022. Rent is \$1,500.00 per month and the respondent holds a security deposit of \$750.00. The respondent owns the residence.

The respondent also occupied a room in the residence on an intermittent basis when required to be in the city for work. The kitchen facilities were shared by the applicant and respondent.

From September 3 to October 14, 2022, the respondent rented her space in the subject premises to another occupant. This was an arrangement meant to provide a temporary accommodation to an individual who needed a place to stay briefly on an urgent basis. The respondent did not occupy the premises during that time. It was during that time that the One Month Notice was served on the applicant by the respondent’s agent.

The applicant submits that because the One Month Notice was issued during the period of time that the respondent had rented her portion of the premises to another occupant, the Act applies, and the respondent was required to issue a One Month Notice in accordance with the Act.

The respondent takes the position that the Act does not apply to this situation.

Section 4 of the Act states:

This Act does not apply to

(c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,

The time period where the respondent’s portion of the subject residence was rented was approximately six weeks. This is a very short time period in the context of the applicant’s rental of his portion of the residence, which had been ongoing for almost one year. The Act did not apply to the rental arrangement of the parties that began in September 2021, and the temporary occupation of the premises by another person does not trigger the application of the Act for that time period. The applicant did not

enjoy exclusive possession of the subject premises, the respondent was still entitled to enter the premises and access the shared facilities if she chose to do so.

The tenancy in this case was initially created in circumstances where the Act would not apply. I have no evidence before me that shows that the parties mutually intended to change the tenancy into one where the Act would apply.

I find that the Act does not apply to the parties in this dispute. I therefore do not have jurisdiction to decide this matter or grant the relief requested by the applicant.

Conclusion

I do not have jurisdiction over this tenancy as the Act does not apply.

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: November 04, 2022

Residential Tenancy Branch