



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes ET

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlords applied for an order for early termination of a tenancy, pursuant to section 56.

I left the teleconference connection open until 9:50 A.M. to enable the tenants to call into this teleconference hearing scheduled for 9:30 A.M. The tenants did not attend the hearing. Landlords TH and MH attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Counsel for the landlords AK (the counsel) also attended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlords, the counsel and I were the only ones who had called into this teleconference.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure and section 95(3) of the Act.

The counsel affirmed the notice of hearing and the evidence (the materials) were attached to the rental unit's front door on May 17, 2023 at 2:10 PM. The process server attached one package for each tenant. The landlords submitted two witnessed proof of service (RTB forms 9) stating the packages were attached to the rental unit's front door on May 17, 2023 at 2:10 PM and photographs of the packages attached to the front door.

Based on the landlord's testimony, RTB forms 9 and photographs, I find the landlords' agent attached the materials to the tenants' front door on May 17, 2023 at 2:10 PM. I find the landlords served the materials in accordance with section 89(2)(d) of the Act.

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by attaching to the door, on the 3rd day after it is attached. The tenants are deemed to have received the materials on May 20, 2023, in accordance with section 90(c) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondents.

The counsel stated that both tenants had one tenancy agreement with the landlords and that there is no clause in the tenancy agreement requiring both tenants to sign tenancy related documents.

The landlord submitted a copy of the mutual agreement to end tenancy (RTB form 8) signed by tenant SB and the landlord on May 25, 2023 indicating the tenancy will end on June 01, 2023 at 1:00 PM.

Policy Guideline 13 states:

There may be more than one tenant; co-tenants are two or more tenants who rent the same rental unit or site under the same tenancy agreement. Generally, co-tenants have equal rights under their agreement and are jointly and severally responsible for meeting its terms, unless the tenancy agreement states otherwise. "Jointly and severally" means that all co-tenants are responsible, both as one group and as individuals, for complying with the terms of the tenancy agreement. [...]

A tenant can end a tenancy by giving the landlord a written notice. A tenancy may also end if the landlord and any tenant or co-tenant mutually agree in writing to end the tenancy. When a tenancy ends in these circumstances, the notice or agreement to end the tenancy applies to all co-tenants.

Based on the undisputed testimony and the mutual agreement to end tenancy, I find this application is moot, as one of the tenants signed a mutual agreement to end the tenancy effective two calendar days after the hearing.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the application for an order of possession.

Conclusion

I dismiss the application without leave to reapply.

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: May 30, 2023

Residential Tenancy Branch