



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding D&H AUTOMOTIVE INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FF

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* ("Act"), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- an early end to tenancy and an order of possession, pursuant to section 56; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 12 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord stated that he had a person with him during the hearing who helped him with service of documents, so I allowed her to participate in the conference with him.

Preliminary Issue – Service of Landlord's Application

When initially asked about service of his application, the landlord was not prepared to provide evidence. He said that he needed more time to find his evidence. I provided him with 12 minutes of hearing time, of which he had a person helping him locate documents during the hearing, to provide evidence regarding service.

The landlord stated that the tenant was served in April. When I asked him how the tenant was served on a future date that had not yet occurred, he said he did not know. He then said that the tenant was served on January 18, 2018. When I asked how he served the application when the notice of hearing was not generated until January 22, 2018, he said he did not know. He then claimed that he served the tenant on January 28, 2018. When I asked why his documents were not served within three days of receiving the notice of hearing on January 22, 2018, since he was advised by the Residential Tenancy Branch that he must serve by January 25, 2018, he said that he

did not know. He then claimed that he was confused, he did not have all of his evidence, and he was not prepared to go ahead with the hearing and wanted to reschedule the hearing to a future date. I notified him that I could not reschedule the hearing and that he had 12 minutes of hearing time to locate his information.

I find that the landlord provided confusing evidence regarding service of this application, changing his testimony regarding three different dates, one of which was prior to the notice of hearing date and one for a future date that has not yet occurred. The landlord said that he was not prepared for this hearing and wanted to come back on a future date.

Accordingly, I find that the landlord failed to prove service in accordance with section 89 of the *Act* and the tenant was not served with the landlord's application.

At the hearing, I informed the landlord that I was dismissing his application with leave to reapply, except for the filing fee. I notified him that he would be required to file a new application and pay a new filing fee, if he wished to pursue this matter further. I cautioned him that he would have to provide specific evidence regarding service of documents at the next hearing. I notified him that there were specific rules about serving evidence to the tenant right away for an early end to tenancy application.

Conclusion

The landlord's application to recover the \$100.00 filing fee is dismissed without leave to reapply.

The remainder of the landlord's application is dismissed with 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: February 20, 2018

Residential Tenancy Branch