



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FF

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed March 7, 2018, wherein the Landlord requested an early end to tenancy pursuant to section 56 of the *Residential Tenancy Act* and to recover the filing fee.

The hearing was conducted by teleconference on April 10, 2018. Only the Landlord and his daughter, A.N., who acted as his agent, called into the hearing. A.N. gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

As the Tenant failed to attend the hearing, service of the Landlord's Application and Notice of Hearing was considered. A.N. testified that she and her husband personally served the Tenant with the Notice of Hearing and the Application. She was not able to provide a date when this service occurred, despite being provided 15 minutes to ascertain this information from her notes, as well as communication with her husband.

Rule 3.1 of the *Residential Tenancy Branch Rules of Procedure* provides as follows:

3.1 Documents that must be served

The applicant must, within 3 days of the hearing package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the application for dispute resolution;
- b) the notice of dispute resolution proceeding letter provided to the applicant by the Residential Tenancy Branch;

- c) the dispute resolution proceeding information package provided by the Residential Tenancy Branch;
- d) a detailed calculation of any monetary claim being made;
- e) a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and
- f) any other evidence, including evidence submitted to the Residential Tenancy Branch with the application for dispute resolution, in accordance with Rule 2.5 [*Documents that must be submitted with an application for dispute resolution*].

Section 89 of the *Residential Tenancy Act* provides as follows:

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

As the Landlord was unable to provide testimony to satisfy me that they served the Tenant in accordance with the *Rules* and the *Act*, I am unable to find that the Tenant was given notice of the hearing.

One of the principles of natural justice is that a party to a dispute has the right to know the claim against them and an opportunity to attend the hearing and make submissions in defense of the claims made. To proceed without adequate notice to the Tenant would offend this principle and would deny the Tenant a fair opportunity to be heard.

The Landlord's agent testified that the Tenant applied to dispute the 1 Month Notice to End Tenancy and that a hearing of the Tenant's Application was scheduled for May 8, 2018 at 10:30 a.m. A review of the Residential Tenancy Branch records confirms this

information. As such, the merits of the Landlord's request to end the tenancy will be considered in less than a month from the date of the hearing before me; I therefore find that an adjournment of the Landlord's claim for an early end to tenancy would be of no benefit to the parties.

I therefore dismiss the Landlord's Application filed March 7, 2018, 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: April 10, 2018

Residential Tenancy Branch