



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- early termination of tenancy and Order of Possession, pursuant to section 56; and
- repayment of the filing fee, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open for 14 minutes in order to enable the tenant to call into this teleconference hearing scheduled for 11 a.m. 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. 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 landlord and I were the only ones who had called into this teleconference.

Preliminary Issue: Service

The landlord testified that he served the dispute resolution application package on the tenant's brother at the tenant's address.

Section 89 of the Act establishes the following Special rules for certain documents, which include an application for dispute resolution:

89(1) An application for dispute resolution,...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 document]...*

I find that the landlord did not serve the tenant in a manner required by section 89(1) of the *Act*.

I dismiss the landlord's application with leave to reapply.

Application Issue

The landlord testified that he served a 10 Day Notice to End Tenancy for Unpaid (the "10 Day Notice") and was originally seeking an Order of Possession for unpaid rent but during the online application, he also clicked on an icon that asked him if he thought his property was at risk which he testified he is. The landlord testified that this icon must have changed his application from an order of possession for unpaid rent to and early end to tenancy. The tenant testified that he did not mean to file for an early end to tenancy and expressed frustration that filling out an application form incorrectly could cause a delay in the resolution of his claims.

I advised the landlord that he was able to start a new application for both a Monetary Order for unpaid rent and an Order of Possession for unpaid rent but that he should be very careful and clear on the application as to what he is applying for.

Conclusion

I dismiss the tenant's application with leave to reapply.

I dismiss the landlord's application to recover the \$100.00 filing fee 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: July 06, 2018

Residential Tenancy Branch