



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      ET, FF

### **Introduction**

This hearing dealt with an application by the landlord pursuant to section 56 of the *Residential Tenancy Act*, for an order to end the tenancy early and obtain an order of possession. The landlord also applied for the recovery of the filing fee.

The landlord was represented by his agent. The agent testified that he served the tenant with the notice of hearing and application for dispute resolution on July 10, 2018 by email. The tenant did not attend the hearing by conference call.

The landlord made this application on line on June 08, 2018. In an email dated June 13, 2018, the landlord was cautioned that it is likely that his application for an early end to tenancy might not hold up for non-payment of rent. The landlord did not respond and therefore the application was processed as is and in an email dated June 18, 2018 to the landlord, the Residential Tenancy Branch informed the landlord that his application had been processed and gave him instructions on how to print the notice of hearing package and how to proceed from there. One of the steps that the landlord was required to take was stated in the letter as follows:

*You must serve the full Notice of Hearing package to the respondent in the next 3 days either in person, or by sending the documents to each respondent by Canada Post registered mail.*

The landlord served the notice of hearing and evidence package on the tenant on July 10, 2018 by email for a hearing scheduled for July 13, 2018. The tenant did not attend the hearing.

Section 59(3) of the *Residential Tenancy Act* states that a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it.

Since the landlord served the tenant with the notice of hearing by emailing the package 20 days after receiving it and just 3 days before the hearing, I find that the notice of hearing and evidence package was not served in compliance with sections 88, 89 and 59(3) of the *Residential Tenancy Act*

The purpose of serving a notice of hearing under the Legislation is to notify the person being served of matters relating to arbitration and to provide the person with an opportunity for rebuttal. The tenant is entitled to have an opportunity to be heard at the hearing.

Based on the above, I am not satisfied that the tenant was served with the notice of hearing and evidence package pursuant to s.88, 89 and 59(3) and therefore I dismiss the landlord's application with leave to reapply.

In addition, the landlord has made application to put an early end to tenancy pursuant to section 56 of the *Residential Tenancy Act*. Section 56 is an extraordinary remedy that is reserved for situations in which there is a clear and present danger, or a genuine threat of imminent harm of such an extreme nature that it would warrant immediate intervention and removal of the tenant. In this case, the main reason for the landlord wanting the tenancy to end is for non-payment of rent which does not meet the requirements of s.56. The landlord is at liberty to make application for an order of possession and a monetary order for unpaid rent through the direct request process.

### **Conclusion**

The landlord's application is dismissed. The landlord must bear the cost of filing this application.

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 13, 2018

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Residential Tenancy Branch