



# Dispute Resolution Services

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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 an early end to this 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, although I left the teleconference hearing connection open until 9:42 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn 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. During the hearing, I also confirmed that the landlord and I were the only ones who had called into this teleconference.

At the beginning of the hearing, the landlord testified that the tenant had moved out some time on or around November 13, 2019, and no longer required an Order of Possession. On this basis, the landlord's application for an Order of Possession was cancelled.

### **Preliminary Issue - Service of Documents**

The landlord filed an amendment to her application on November 7, 2019 to add a monetary claim for losses associated with this tenancy. The landlord testified that the tenant had moved out without providing her with a forwarding address. The landlord was unable to provide confirmation that the tenant was served with this amendment.

Rule 4.6 states the following:

***As soon as possible, copies of the Amendment to an Application for Dispute Resolution and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by the applicable Act and these Rules of Procedure.***

*The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution and supporting evidence as required by the Act and these Rules of Procedure.*

***In any event, a copy of the amended application and supporting evidence must be received by the respondent(s) not less than 14 days before the hearing.***

I am not satisfied that the tenant was served with the landlord's amendment in accordance with RTB Rule 4.6. As the respondent has the right to review and respond to the amendment and supporting evidence, the landlord's amendment was not considered in the hearing.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As I was not required to make a decision on the merits of this case, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application. The landlord must bear the cost of this filing fee.

### **Conclusion**

The landlord withdrew her application for an Order of Possession.

As the landlord's amendment was not served on the tenant in accordance with RTB Rule 4.6, the landlord's amendment was not considered in this hearing.

The landlord's application to recover the filing fee is dismissed 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: December 19, 2019

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Residential Tenancy Branch