



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 order for an early termination of tenancy and an Order of Possession for an immediate and severe risk pursuant to section 56; and
- Authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord attended the hearing with his counsel, HK. The tenant did not attend the hearing, although I left the teleconference connection open until 10:15 a.m. to enable the tenant to call into this hearing scheduled for 9:30 a.m. 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 Issues

The landlord advised me that prior to this hearing, on May 12, 2020, the landlord was awarded an Order of Possession for unpaid rent. The previous arbitration file number is recorded on the cover page of this decision. Based on the submissions of counsel, I reviewed the previous case and determined that a decision had not yet been rendered at the time of this hearing. As no decision had been made on the previous file, I find that as of today's date, the tenancy has not ended and that the landlord's application for an early end to tenancy pursuant to section 56 of the *Act* is properly before me for hearing.

The landlord testified that he served the tenant with the Notice of Expedited Hearing by sending it to the tenant by registered mail to the tenant's residential address on April 29, 2020. The landlord provided a photograph of the envelope containing the Notice

bearing a Canada Post tracking number which is recorded on the cover page of this decision. The landlord also provided a form RTB-9 Proof of service: notice of expedited hearing – Dispute Resolution Proceeding form in his evidence package.

In his evidence, the landlord also provided a document titled 'Overview of the Facts'. The second bullet in the document states:

- The tenant, [name withheld to protect privacy], no longer lives at the Property. He committed assault against his ex-wife and is subject to conditions prohibiting him from coming near the Property.

Counsel for the landlord also submits that the tenant no longer lives in the rental unit and that it is currently occupied by the ex-spouse of the tenant.

Residential Tenancy Branch Policy Guideline PG-12 [Service Provisions], at section 4 states:

4. SPECIAL REQUIREMENTS FOR SERVICE OF DOCUMENTS for:

- ☐ An application by a landlord for an order of possession
- ☐ An application by a landlord for an order ending tenancy early

All parties named on an application for dispute resolution must be served separate notice of proceedings, including any supporting documents submitted with the application, as set out in the Legislation. Failure to serve documents in a way recognized by the Legislation may result in the application being adjourned, dismissed with leave to reapply, or dismissed without leave to reapply. Failure to serve evidence properly may result in that evidence not being considered and the hearing proceeding, or the hearing being adjourned (see also "Parties not served" in section 15 below). There are only four methods of service that may be used for these matters.

- i. Personal Service
- ii. Registered Mail (see below)
- iii. Posting
- iv. A Residential Tenancy Branch Order Regarding Service

ii. Registered Mail

Where a landlord is serving a tenant by Registered Mail, the address for service must be **where the tenant resides at the time of mailing**. Registered Mail includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available. (emphasis added)

A Notice of Expedited Hearing is a document that must be served in accordance with the Director's Standing Order on service dated June 26, 2019 which orders:

THE DIRECTOR ORDERS that:

Pursuant to sections 71(2)(a) and (c) of the RTA and sections 64(2)(a) and (c) of the MHPTA, and subject to any further order made pursuant to those sections:

1. A party to an application for dispute resolution set down under Rule 10 of the rules of procedure for a hearing date that is between six and 11 days after the date the application is made must serve their materials
 - 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, or
 - c. if the person is a tenant, by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant.
2. A party to an application for dispute resolution set down under Rule 10 of the rules of procedure for a hearing date that is between 12 and 16 days after the date the application is made must serve their materials
 - a. by any method set out in paragraph 1 of this order,
 - b. by attaching a copy to a door or other conspicuous place at the address at which the person resides, or
 - c. if the person is a landlord, by attaching a copy to a door or other conspicuous place at the address at which the person carries on business as a landlord.
3. A party to an application for dispute resolution set down under Rule 10 of the rules of procedure for a hearing date that is 17 days or more after the date the application is made may serve their materials
 - a. by any method set out in paragraphs 1 and 2 of this order,
 - b. **by sending a copy by registered mail to the address at which the person resides,** or
 - c. if the person is a landlord, by sending a copy by registered mail to the address at which the person carries on business as a landlord.

(emphasis added)

The ability to serve a Notice of Expedited Hearing by registered mail to the address at which the tenant resides was not affected by the Ministerial Order No. M073 issued by the Minister of Public Safety and Solicitor General.

Based on the submissions of the landlord and the documents provided, I am not satisfied the tenant was served with the Notice of Expedited Hearing. As such, I dismiss this application with leave to reapply.

Conclusion

This 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: May 25, 2020

Residential Tenancy Branch