



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- an order for early termination of a tenancy, pursuant to section 56 of the *Act*;
- an authorization to recover the filing fee for this application, pursuant to section 72 of the *Act*.

I left the teleconference connection open until 9:41 A.M. to enable the tenant (respondent) to call into this teleconference hearing scheduled for 9:30 A.M. The tenant did not attend the hearing. 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 (applicant), her counsel (SG) and I were the only ones who had called into this teleconference. The landlord and her advocate were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord affirmed the tenant was served the application by process server. At first the landlord stated she believes service happened on August 17, 2020. Then she corrected herself to state the service happened on August 14 or August 15, 2020. Counsel SG affirmed a prior counsel represented the landlord, service happened by process server on August 14, 2020 and there is a letter informing the application was delivered to the tenant. A copy of the letter was not submitted.

Rule of Procedure 3.5 states:

3.5 Proof of service required at the dispute resolution hearing

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the

arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

Residential Tenancy Branch Policy Guideline 12 states:

Where the respondent does not appear at a dispute resolution hearing, the applicant must be prepared to prove service of the notice of hearing package. Proof of service of other documents may be submitted in support of claims for dispute resolution in accordance with the Rules of Procedure.

Where proof of service is required, the person who actually served the documents must either:

- **be available as a witness in the hearing to prove service, or**
- **provide a signed statement with the details of how the documents were served.**

Proof of service personally should include the date and time of service, the location where service occurred, description of what was served, the name of the person who was served, and the name of the person who served the documents.

Proof of service by Registered Mail should include the original Canada Post Registered Mail receipt containing the date of service, the address of service, and that the address of service was the person's residence at the time of service, or the landlord's place of conducting business as a landlord at the time of service as well as a copy of the printed tracking report.

Proof of service personally on an adult who apparently resides with the tenant should include:

- either an acknowledgment of the date and time of service, the location where service occurred, description of what was served, the name of the person who was served, and the name of the person who served the documents as well as confirmation that the person is an adult; or,
- witness confirmation of service on the adult including date and time of service, the location where service occurred, description of what was served, the name of the person who was served, and the name of the person who served as well as a description of how the witness knows the person served is an adult who apparently resides with the tenant.

Failure to prove service may result in the matter being dismissed, with or without leave to reapply. Adjournments to prove service are given only in unusual circumstances.

Proof of service by methods other than personal service or Registered Mail should include:

- the date and time of service,
- details of the method used to serve, including:
 - o the name of the adult served,
 - o if posted, the address where the documents were attached,

- o the fax number to which the document was faxed and proof that the fax transmission was completed,
- o the address of the mailbox or mail slot used,
- o who effected service

A photograph of a posted or deposited document in its posted or deposited location may reinforce the veracity of service.

(emphasis added)

As no document proving service was submitted and the applicant provided a confusing testimony indicating three possible service dates, I can not confirm service of the application.

Thus, I find the tenant was not served in accordance with the Act.

Conclusion

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

I dismiss the landlord's application for an authorization to recover the filing fee for this application 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: September 03, 2020

Residential Tenancy Branch