



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: ET FFL

Introduction

In this dispute, the landlord sought an order to end the tenancy and for an order of possession pursuant to section 56 of the *Residential Tenancy Act* (the “Act”). They also sought recovery of the filing fee under section 72 of the Act.

The landlord filed an application for dispute resolution on September 2, 2020 and a dispute resolution hearing was held at 9:30 AM on October 9, 2020. The landlord and the tenant (R.F.) attended the hearing.

Preliminary Issue: Landlord’s Service of Notice of Dispute Resolution

In reviewing the file in advance of the hearing, it became apparent that the landlord had not served the Notice of Dispute Resolution Proceeding package (the “Notice”) on the tenants. At the start of the hearing, just after I had completed a roll call, the tenant advised me that she had never received the Notice and that the only reason she even knew about this hearing was because her landlord told her about it last Friday (that is, October 2, 2020). She further explained that, given the very last-minute nature of the notice, she has not had sufficient time to prepare or provide evidence or a response.

The landlord testified that he never received a copy of the Notice of Dispute Resolution Proceeding from the Residential Tenancy Branch (the “Branch”). The file indicates, however, that the Branch emailed him the Notice on September 9, 2020. It also indicates that an Information Officer telephoned the applicant that same date, but that he was not home. The landlord then appears to have contacted the Branch on October 5, 2020, inquiring as to the status of his application. On October 6 (3 days before the hearing) the tenant contacted the Branch and she advised that she had not received the Notice. On October 8 the landlord again contacted the Branch, saying that he never received the Notice. The Branch again forwarded the landlord a copy of the Notice.

Rule 10.3 of the Branch's *Rules of Procedure* states that

The applicant must, within one day of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following: [. . .] the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution; [. . .]

In this case, the Branch emailed the Notice on September 9, 2020, to the landlord at the email address he provided. He claims never to have received it. And, of course, I must not dismiss the possibility that the Branch sent it to the wrong email. But, the Branch sent it a second time and the landlord claims not to have received the Notice. Thus, it is highly unlikely that the landlord did not receive the Notice. Leaving this possibility aside for the moment, however, some level of due diligence must be placed on the landlord. He applied for an expedited hearing on September 2 but did not take any further steps, such as following up with the Branch, until over a month later.

Given the failure of the landlord to serve the tenants with the Notice, as is required by the *Rules of Procedure* and by section 59(3) of the Act, I find that the tenants were not served the Notice as is required by law. Further, as I tried to explain to the landlord, it would be wholly unfair to proceed with a hearing – the result of which could end in the immediate termination of this tenancy – when the respondent party has had but a few days to prepare a defense and submit evidence. The core principles of procedural fairness and natural justice cannot allow an administrative hearing to proceed in these instances.

While the landlord may very well have a legitimate claim (and the allegations made in his application against the tenants are indeed serious), it is required by law that the respondents in a dispute be served with proper notice of a hearing and in a timely manner. They must be served with a copy of the Notice, not told verbally less than a week before the scheduled hearing date.

It should be noted that, after I explained to the parties that I would not be hearing the landlord's application, the landlord became understandably upset, and attempted to provide testimony regarding the issues he is having with the tenants. However, as I advised the parties of my decision, and would not hear any testimony regarding the particulars of the claim, I ended the call promptly and without further warning or notice to the participants.

Conclusion

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

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: October 9, 2020

Residential Tenancy Branch