



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on September 28, 2020 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession to end a tenancy early for immediate and severe risk; and
- a monetary order granting the recovery of the filing fee.

The Landlord's Agents and the Tenant attended the hearing at the appointed date and time. At the start of the hearing, the Landlord's Agents stated that they served the Tenant with the Application and documentary evidence by Xpresspost on September 29, 2020. The Tenant stated that she did not receive the Landlord's package until yesterday, October 19, 2020 after finding the opened package at her door. The Tenant stated that she has not had an opportunity to submit her own documentary evidence in response to the Landlord's Application.

The Landlord's Agents referred to a video that they submitted on September 30, 2020 which indicates that the Tenant received the package on September 30, 2020. This video could not be located in the Landlord's documentary evidence.

Preliminary Matters

Section 89(2) of the Act states; an application by a landlord under section 55 [*order of possession for the landlord*], 56 [*application for order ending tenancy early*] or 56.1 [*order of possession: tenancy frustrated*] must be given to the tenant in one of the following ways:

- (a) by leaving a copy with the tenant;
- (b) by sending a copy by **registered mail** to the address at which the tenant resides;
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;

- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

According to the Residential Tenancy Branch Rules of Procedure 10.9 Proof of Service

An applicant must provide proof of service by submitting RTB 9 Proof of Service – Notice of a Dispute Resolution form one day after serving the Notice of Dispute Resolution Proceeding Package and at least two days before the hearing. Failure to do this may result in the application being dismissed or the hearing being rescheduled or adjourned to a later date.

In this case I find that the Landlord did not serve the Tenant in accordance with Section 89(2) of the Act as Xpresspost is not an approved form of service. While the Landlord's Agents stated that the Tenant received the Landlord's package on September 30, 2020 I find that the Landlord did not submit evidence to support that the Tenant was served.

I accept that the Tenant only received the Landlord's package on October 19, 2020 which is only one day prior to the hearing which also contradicts Section 10.9 of the Rule of Procedure.

In light of the above, I dismiss the Landlord's Application with leave to reapply.

Conclusion

The Landlord has not served the Tenant in accordance with Section 89(2) of the Act. As such, the Landlord's 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: October 20, 2020

Residential Tenancy Branch