



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing was convened in response to an application made October 30, 2020 by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An early end to the tenancy and an order of possession - Section 56; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Has the Landlord served the Tenant with its application as required under the Act?

Background and Evidence

The Landlord states that in September 2020 the Landlord purchased the house containing the rental unit from his son. The Landlord states that he does not know when or whether there is a tenancy for the basement unit. The Landlord states that his son did not give him this information and was not capable of giving the Landlord this information. The Landlord states that he only knew there were people in the basement unit at the time of purchase but that it was supposed to be vacant. The Landlord assumes that some amount of rent is payable on the first day of each month. The Landlord confirms that prior to this application and on October 5, 2020 it served the Tenant with a 10-day notice for unpaid rent and a one month notice to end tenancy for cause. The Landlord states that the Tenant did not dispute the one-month notice.

The Tenant states that they moved into the unit on July 1, 2020, have a signed tenancy agreement with the son and that they each pay monthly rent of \$500.00. The Tenant states that they were not able to upload the tenancy agreement as evidence as they were only given notice of this hearing on November 9, 2020. The Landlord confirms that after making this application the Residential Tenancy Branch informed the Landlord that the application and notice of hearing was required to be served on the Tenant no later than November 4, 2020. The Landlord confirms that the application and notice of hearing was only served the day before this hearing.

Analysis

Section 59(3) of the Act provides that a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director. Based on the undisputed evidence that the Landlord did not serve the application until the day before this hearing I find that the Landlord did not serve the Tenant with its application as required under the Act. Based on the Tenant's undisputed evidence that it could not provide evidence to dispute the claims in the application because of this late notice, I find that the late service has caused prejudice to the Tenant's ability to dispute the claims contained in the Landlord's application. As a result, I dismiss the application with leave to reapply.

Conclusion

The 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 Act.

Dated: November 10, 2020

Residential Tenancy Branch