



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 an application pursuant to the *Residential Tenancy Act* (“the *Act*”) for an early end to this tenancy and an Order of Possession pursuant to section 56; and authorization to recover the filing fee for this application, pursuant to section 72.

While the applicant attended the hearing by way of conference call, the respondent did not. I waited until 9:40 a.m. to enable the respondent to participate in this scheduled hearing for 9:30 am. The applicant was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the applicant and I were the only ones who had called into this teleconference.

The applicant testified that the respondent was served with the application package by way of mailing the package to the respondent on the date he had filed his application. In accordance with sections 88 and 89 of the *Act*, I find the respondent deemed served with the package 5 days after mailing.

Preliminary Issue: Do I Have Jurisdiction to Decide This Matter?

A previous hearing was held on October 20, 2020 pursuant to the occupant’s application to decide whether a 1 Month Notice to End Tenancy was to be cancelled. In the decision dated October 20, 2020, the Arbitrator had declined jurisdiction after deciding that the living arrangement between the two parties at the dispute address was not a tenancy agreement that falls under the *Act*. The applicant confirmed in the hearing that the respondent continues to reside at the dispute address, and living arrangements have remained the same since the last hearing. The applicant states that the respondent has made no efforts to provide compensation to the applicant, and the applicant is still requesting an Order of Possession as the respondent has threatened the health and well-being of others.

I note that this application pertains to the same two parties, and same dispute address. As an Arbitrator had previously decided that this matter does not fall under the *Act*, I find that the preliminary issue of jurisdiction is *res judicata* meaning the matter has already been conclusively decided and cannot be decided again.

On this basis, I find I am unable to consider this application as I have no jurisdiction in this matter.

Conclusion

I decline to hear this matter as I have no jurisdiction to consider this application.

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: November 16, 2020

Residential Tenancy Branch