



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT

Introduction

This expedited hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for an order of possession for the tenant pursuant to section 54 of the Act.

The applicant/tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:40 a.m. to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. 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 and I were the only ones who had called into this teleconference.

The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified he was not served with the tenant's Notice of Expedited Hearing at any time. On October 8th, the landlord discovered the tenant had filed the within application when he contacted the Residential Tenancy Branch concerning his own application filed against the tenant. He asked for and received a copy of the Notice of Expedited Hearing by email from the staff at the Residential Tenancy Branch. The tenant has not filed any proof of service of the Notice of Dispute Resolution Proceedings into the dispute resolution management system.

The landlord testified that the rental unit is now occupied by a new tenant after this tenant was served with a 10 Day notice to end tenancy for unpaid rent.

Preliminary Issue - Service

The tenant's application for an order of possession is an application that falls under Rule 10 of the Residential Tenancy Branch Rules of Procedure [Expedited Hearings].

Expedited Hearings are considered urgent matters reserved for situations where urgency and fairness necessitate shorter service and response time limits. As such, proof of service of the Notice of Dispute Resolution Proceedings and the associated documents listed in Rule 10.3 must be proven by the filing of the proof of service document. Rules 10.3 and 10.9 state:

10.3 Serving the notice of dispute resolution proceeding package

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 the Notice of Dispute Resolution Proceedings...

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.

Preliminary Issue – failure to attend hearing

Rule 7.3 of the Rules of Procedure provides that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application with or without leave to re-apply. Rule 7.4 states that evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend to present evidence, any written submissions supplied may or may not be considered.

The tenant did not attend the hearing which was scheduled by conference call at 9:30 a.m. As she did not attend, she did not present evidence regarding the merits of her claim for me to consider.

As the tenant has not provided proof of service to indicate she served the Notice of Dispute Resolution Proceedings within one day of the package being made available and because the tenant did not attend to present evidence regarding the merits of her claim for me to consider, I dismiss the tenant's application without leave to reapply.

Conclusion

The tenant's application is dismissed 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: November 19, 2020

Residential Tenancy Branch