



# 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 by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for early termination of a tenancy pursuant to section 56;
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlord attended with her spouse/agent JL and her daughter/translator/agent NP ("the landlord"). The tenant attended with the advocates TR (who was also providing technical support with respect to the conference call) and IC.

### *Preliminary Issue – Interruption in Connection*

The hearing began at 11:00 AM with all participants present. At 11:47 AM the connection to the hearing was suddenly terminated for all participants.

The Arbitrator, the tenant and the two advocates called back in within 3 minutes (by 11:50 PM) and waited on the line for 20 minutes for the landlord to reconnect. As the landlord did not reconnect, the hearing resumed at 12:10 PM and concluded at 12:15 PM in the landlord's absence.

The Arbitrator's subsequent enquiries indicated that the disconnection was a technical issue and was not repeatable.

### *Preliminary Issue – Notice*

At the outset, the tenant objected to the application proceeding. The tenant claimed the landlord did not provide the required notice under the Rules. The tenant and advocates testified that the short notice did not give the tenant an opportunity to prepare.

Accordingly, the parties were heard on the preliminary objections and provided affirmed testimony regarding service.

This application is an expedited process, that is, an urgent procedure when a landlord claims the tenant poses an immediate and severe risk to the rental property, other occupants or the landlord and the landlord seeks an order of possession. The expedited hearing process is for emergency matters, where urgency and fairness necessitate shorter service and response time limits. Short notice means the respondent has less time than usual to prepare for the hearing as well as to serve and submit evidence.

Under Rule 10, the director has established an expedited hearing process for certain types of disputes.

Policy Guideline # 51 states in part as follows:

*Scheduling an Expedited Hearing*

*If the director is satisfied that an application meets the criteria for an expedited hearing, the hearing is scheduled in accordance with Rule 10 of the rules of procedure. The director will usually try and schedule the application for a hearing within 12 days from the date it is received or as soon as possible if an expedited hearing slot is not available within 12 days.*

*In extremely urgent cases, the director may set the matter down to be heard as soon as six days after the application is made subject to an available hearing slot. The director has the discretion to decide what constitutes an extremely urgent case*

Rule 10.9 sets out the rules for service and states:

**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.*

The Notice of Dispute Resolution Hearing for an expedited hearing was issued by the RTB to the landlord on November 24, 2020.

Further to the above Rule, the applicant must serve each respondent with a Notice of Dispute Resolution Proceeding Package within one day of it being available (In this case, November 24, 2020) where the hearing date is in 10 days (December 3, 2020). Service must take place before November 25, 2020.

As well, as stated in the Rule, the applicant must complete an *RTB 9 – Proof of Service* form and submit it to the RTB.

The landlord testified the documents were served on November 26, 2020. The tenant testified the landlord served the tenant on November 27, 2020 which was supported by the testimony of the two advocates who attended the hearing. They testified they have represented the tenant in several applications brought by the landlord within the past year and the tenant immediately informed them of service as he did in this case.

As the landlord testified the documents were not served within 1 day as required, the Application is dismissed 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 *Residential Tenancy Act*.

Dated: December 07, 2020

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Residential Tenancy Branch