



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing was scheduled for 9:30 a.m. on this date, via teleconference call, to deal with the landlord's application for an order to end the tenancy early due to an immediate and severe risk to the rental property or other occupants or the landlord and obtain an Order of Possession under section 56 of the Act.

The landlord appeared for the hearing; however, there was no appearance on part of the tenant.

Since the tenant did not appear, I explored service of hearing materials upon the tenant.

The proceeding package was issued to the landlords by the Residential Tenancy Branch on May 11, 2021 with instructions for the landlords to serve the package to the tenant by May 15, 2021.

The landlord testified that they attempted to serve the occupant living in the rental unit with the proceeding package in person, as the tenant no longer lives in the rental unit, but the occupant would not open the door. The landlords then sent the proceeding package to the tenant on via registered mail. The landlord orally provided a registered mail tracking number as proof of service (tracking number recorded on the cover page of this decision). A search of the tracking number showed registered mail sent on May 18, 2021 and was being returned as it was unclaimed. The landlord also testified that the package was emailed.

The landlord testified that the tenant was last seen at the property and paid rent for the month of November 2020 and that a woman has been living in the rental unit who told the landlords that she is a friend of the tenant and that the tenant is in rehab.

Where a landlord seeks an Order of Possession, the landlord is required to serve the proceeding package with three days of receiving it from the Residential Tenancy Branch, as provided under section 59 of the Act, and in a method that complies with section 89(2) of the Act. Where the respondent does not appear or is represented at the hearing, the applicant bears the burden to prove service of the required documents complies with the Act.

In this case, the landlord did not serve the tenant within three days of receiving the proceeding package from the Residential Tenancy Branch. If the landlords were unable to serve the tenant or adult occupant in person, the landlords could have attached the proceeding package to the door of the rental unit; however, the landlords did not do this. Registered mail may also be used; however, the mail was not sent until May 18, 2021. The landlord did not provide proof of the proceeding package being emailed to the tenant or that the email was received by the tenant, or evidence that the email address listed for the tenant was an email address the tenant gave to the landlord for purposes of receiving documents.

The landlord further testified that they had been giving the occupant of the rental unit a 1 Month Notice to End Tenancy for Cause ("1 Month Notice") each month when the landlords collected rent that they accepted "for use and occupancy only" for the months of January 2021 through April 2021 with the last 1 Month Notice taking effect May 31, 2021. The landlords did not apply for an Order of Possession based on the 1 Month Notices and I asked the landlords what emergency arose since the last 1 Month Notice was issued on April 29, 2021 that caused the landlords to file this Application for Dispute Resolution on May 4, 2021. The landlord responded that the occupant did not pay any rent for May 2021 and will not open the door or let them enter the house when the landlords come to the property and will only speak to them through the door.

Having been unsatisfied the landlords met their obligation to properly serve the proceeding package and hearing testimony that is inconsistent with an emergency situation, I informed the landlord that I would not proceed to hear this case and that I was dismissing the application.

I informed the landlord that they may be entitled to an Order of Possession based on the 1 Month Notices but that she would have to make the appropriate application for that and supply copies of the 1 Month Notice(s). I also informed the landlord that the landlord's have a right under the Act to enter the rental unit by giving a notice of entry. The landlord became very upset and was crying, yelling and would not let me speak. I cautioned the landlord that I would not continue to listen to the landlord's yelling and not permitting me to

conduct the hearing. The landlord continued the inappropriate behaviour and I ended the teleconference call in keeping with Rule 6.10 of the Rules of Procedure, which provide:

6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing

Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

The landlords would be well served to familiarize themselves with the remedies available to them. Information may be obtained by contacting the Residential Tenancy Branch general information line or on the website.

Conclusion

The landlord'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: June 10, 2021

Residential Tenancy Branch