



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET FFL

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- An early end of the tenancy and Order of Possession pursuant to section 56; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The named landlord CL (the "landlord") attended was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord was made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and they testified that they were not making any recordings.

The landlord testified that their notice of dispute resolution and evidentiary materials were personally served on the tenant by a family member sometime in the past week.

Analysis

Section 89(2) of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution for an order of possession for the landlord:

An application by a landlord under section 55 [*order of possession for the landlord*], 56 [*application for order ending tenancy early*] or 56.1 [*order of possession: tenancy frustrated*] must be given to the tenant in one of the following ways:

- (a) by leaving a copy with the tenant;
- (b) by sending a copy by registered mail to the address at which the tenant resides;
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

While having an agent leave a copy with the tenant is an acceptable means of service, I find that the landlords have provided insufficient evidence to demonstrate, on a balance of probabilities, that service has been performed. I find the absence of substantive evidence such as a Proof of Service Form signed by the agent in the presence of a witness, correspondence from the tenant confirming receipt, photographs showing delivery or even the agent attending the hearing to provide sworn testimony and the exact date when service was performed leaves me with little confidence that the tenant was served in a manner consistent with the *Act*, or at all.

Based on the paucity of evidence I am not satisfied that the tenant was properly served with the application for dispute resolution. Consequently, I dismiss the present application for an early end of the tenancy and Order of Possession with leave to reapply.

As the landlord was unsuccessful in their present application, I dismiss their claim for recovery of the filing fees.

Conclusion

The landlords' application for an early end of the tenancy and Order of Possession is dismissed with leave to reapply.

The landlords' application to recover the filing fees 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 1, 2021

Residential Tenancy Branch