



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 the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an early end to tenancy and an order of possession, pursuant to section 56; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two tenants (male and female) did not attend this hearing, which lasted approximately 8 minutes. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing began at 9:30 a.m. and ended at 9:38 a.m.

The landlord's agent affirmed that she had permission to represent the landlord named in this application, who owned the rental unit.

At the outset of this hearing, I notified the landlord's agent that Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* does not permit recording of this hearing by anyone. The landlord's agent affirmed, under oath, that she would not record this hearing.

During this hearing, I explained the hearing process to the landlord's agent. She had an opportunity to ask questions. She did not make any adjournment or accommodation requests.

The landlord's agent stated that the female tenant moved out of the rental unit because she was removed by her ex-husband. She claimed that the other tenants living at the rental property told her that the male tenant is still living at the rental unit.

Preliminary Issue – Service of Landlord's Application

The landlord's agent testified that the two tenants were served with the landlord's application for dispute resolution hearing package on May 8, 2021. When I asked how the application was served in May when the notice of hearing is from August 2021, the landlord's agent then claimed that she mixed up her dates and it was August 5, 2021.

The landlord's agent stated that she served two copies of the landlord's application to the tenants, by leaving a copy in the tenants' black mailbox at the rental property. When I asked if she served the tenants by any other method, she said that she did not. She confirmed that the landlord provided two signed, witnessed proofs of service stating on page 2, that the two applications were served by the landlord's agent by leaving a copy in the tenants' mailbox. She claimed that page 1 of the two proofs of service indicate that the two applications were posted to the door, but that was not correct, since she personally left two copies in the tenants' mailbox and the landlord signed as a witness for same.

Section 89(2) of the *Act* states the following:

(2) 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];*
- (f) by any other means of service provided for in the regulations.*

Accordingly, I find that the landlord failed to prove service in accordance with section 89 of the *Act* and the tenants were not served with the landlord's application. I notified the landlord's agent that leaving copies in the tenants' mailbox was not permitted by section 89 of the *Act*. The tenants did not attend this hearing to confirm service of the landlord's application.

I informed the landlord's agent that the landlord's application was dismissed with leave to reapply, except for the filing fee. I notified her that the landlord could file a new application, if the landlord wants to pursue this matter in the future.

After I informed the landlord's agent of my decision, she began yelling at me. She then stated that she served the male tenant in person with the landlord's application. She further claimed that the male tenant always yelled at her and would not open the door, so she could not serve him in person. Based on the testimony of the landlord's agent, I find that the tenants were not served in person with the landlord's application.

The landlord's agent continued yelling at me and interrupting me. I cautioned her repeatedly, but she continued with this behaviour. Therefore, after 8 minutes in this hearing, at 9:38 a.m., I thanked the landlord's agent for attending the hearing and informed her that I was ending the conference.

Conclusion

The landlord's application to recover the \$100.00 filing fee, is dismissed without leave to reapply.

The remainder of the landlord's 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: August 27, 2021

Residential Tenancy Branch