



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* (the Act) for:

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

Both parties attended the hearing via conference call and provided affirmed testimony.

At the outset, both tenants stated that the named tenants' last name was incorrect. The landlord stated that he was not sure on the proper last name of both tenants. Both tenants provided their last name. After some discussions both parties confirmed their acceptance of the landlord's application to amend and correct the last name of both tenants. On this basis, the landlord's application was amended.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

The landlord stated that the tenants were both served via the notice of expedited hearing 3 days prior to the scheduled hearing on October 19, 2021. The landlord stated that he did not receive the Notice of Dispute Resolution Proceeding letter dated October 1, 2021. A review of the Residential Tenancy Branch (RTB) file shows that the notice was produced on October 1, 2021 and log notes show that an email was sent to the landlord's listed email on October 1, 2021 with instructions to serve it by October 2, 2021. The landlord stated contacted the RTB on October 19, 2021 stating that no package was received but was notified that the landlord was provided a copy via email

on October 1, 2021. The landlord requested a duplicate copy of the Notice to be sent to the same email address. Both parties confirmed that it was served to the tenants on October 19, 2021. The tenants argued that since receiving the notice they have not been able to properly respond to the application or submit any documentary evidence. The landlord made no comment on the late service to the tenant.

Rules of Procedure 10.3, Serving the notice of dispute resolution proceeding package states in part that 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 of all of the following...

I accept the undisputed affirmed evidence of both parties and find that the landlord failed to properly serve the tenants with the expedited hearing notice as required. The landlord was given instructions to serve the Notice of Dispute Resolution on October 1, 2021 to be served on October 2, 2021 for the hearing date of October 21, 2021. Despite the landlord's claim that he did not receive a copy of the expedited hearing notice the tenants have not been afforded a reasonable opportunity to review and respond to the landlord's application. The landlord did not serve the package until October 19, 2021, 3 days before the scheduled hearing.

Rule of Procedure 10- Expedited Hearings states if any time limit in this rule conflicts with the time limit in another rule, the time limit in this rule applies to the expedited hearing.

Rule 10.1 also states in part that in an application for an expedited hearing, the director may make an order specifying the method of service the applicant must use; make an order specifying earlier time limits than set out in this rule or any other rule; and set down the matter to be heard on a date that is earlier than would be normally be required to accommodate the time limits established under these rules in cases of extreme urgency.

On this basis, the landlord's expedited hearing application is dismissed with leave to reapply for lack of proper service. Leave to reapply is not an extension of any applicable limitation period. I find that to allow the continuation of the landlord's application to be against procedural fairness to the tenants and to allow them an opportunity to properly respond to the landlord's application.

I also note that at the conclusion of the hearing the tenants stated that the address provided by the landlord for the tenant, S.F. was incorrect and could be changed to that same address for the named tenant, T.F.

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: October 21, 2021

Residential Tenancy Branch