



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STERLING MANAGEMENT SERVICES LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **ET, FFL**

Introduction

This expedited hearing dealt with the landlord's 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 tenants 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 corporate landlord was represented by their agent (the "landlord") who 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 they believe another agent of the corporate landlord served the tenant with the hearing package by posting on the rental unit door on or about August 25, 2022. The landlord provided no documentary evidence in support of their submission.

Issue(s) to be Decided

Is the landlord entitled to an early end of the tenancy and Order of Possession?
Is the landlord entitled to recover the filing fee from the tenants?

Background and Evidence

The landlord gave undisputed evidence regarding the following facts. This tenancy began on February 1, 2022. The monthly rent is \$2,300.00 payable on the first of each month. The rental unit is the top portion of a duplex with two suites.

The landlord says they have received multiple complaints about the tenant from the occupant of the downstairs suite. The landlord says there have been complaints and reports of altercations and trespassing. The landlord submitted the text of an email from the downstairs occupant complaining about an incident on July 20, 2022.

The landlord says they have previously applied for an Order of Possession pursuant to a Notice to End Tenancy for Unpaid Rent under the file number on the first page of this decision. That application was filed by the landlord on July 18, 2022 and proceeded by way of an ex parte, Direct Request proceeding. The decision for that proceeding shows that the landlord issued a 10 Day Notice dated July 6, 2022, which was deemed served on July 9, 2022 and against which the tenant paid the full amount of the arrear on July 13, 2022.

Analysis

An application for dispute resolution must be served on the other party.

As noted in Residential Tenancy Policy Guideline 12:

Where the respondent does not appear at a dispute resolution hearing, the applicant must be prepared to prove service of the notice of hearing package. Proof of service of other documents may be submitted in support of claims for dispute resolution in accordance with the Rules of Procedure.

Where proof of service is required, the person who actually served the documents must either:

- be available as a witness in the hearing to prove service, or
- provide a signed statement with the details of how the documents were served.

In the present case the only evidence before is the testimony of the landlord. I note that the landlord initially testified that the tenant was served with the hearing package on

August 4, 2022. When it was pointed out that the date of alleged service was earlier than the date the application was filed, they reviewed their records and said the hearing package was served on or about August 25, 2022.

Based on the paucity of evidence I am not satisfied that the tenant has been served in a manner consistent with the Act, or at all. I therefore dismiss the present application.

Pursuant to Rule of Procedure 6.6 the onus to establish a claim on a balance of probabilities lies with the applicant.

The landlord's evidence consists of a single email from a neighboring occupant and some hearsay testimony about complaints about the tenant's behaviour. I find the evidence to be weak, not persuasive and without support in independent documentary materials. Even if I were to find that the present application had been properly served, I find that the landlord has not established, on a balance of probabilities, their claim.

Accordingly, I dismiss the present application in its entirety without leave to reapply.

Conclusion

The application is dismissed in its entirety 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: September 8, 2022

Residential Tenancy Branch