



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 an application filed by the landlord pursuant the *Residential Tenancy Act* (the “Act”) for:

- An order to end the tenancy early due to circumstances where it would be unreasonable, or unfair to the landlord or other occupants to wait for a Notice to End Tenancy for Cause to take effect pursuant to section 56; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant did not attend the hearing although I left the teleconference connection open throughout the hearing which commenced at 9:30 a.m. and ended at approximately 9:55 a.m. The landlord was represented at the hearing by a person who did not identify herself as the landlord’s agent, but as a person who was helping the landlord named on this application (“SA”). SA did not provide proof of appointment to represent the named landlord as required by Rule 6.8 of the Rules of Procedure. SA noted that her name appears as landlord on the (unsigned) tenancy agreement, although she is not employed as the landlord’s property manager.

Preliminary Issue – Service of Notice of Expedited Hearing

SA testified that she served the tenant with the Notice of Expedited Hearing via email on October 25, 2022 to the email address reflected on the cover page of this decision. SA testified that the tenant would not sign a form *RTB-51 Address for Service* document, acknowledging she could be given or served documents related to the tenancy at a specified email address.

In evidence, SA provided a text exchange with the tenant from a cell phone number different from the one provided by the tenant at the beginning of the tenancy. In this text exchange dated October 11, 2022, the tenant texts the landlord, saying at 2:54 p.m. saying she “...*don’t have email right now*”. When SA asks whether the tenant received

an email from last week, the tenant responds at 3:37 p.m., saying, *“No I can’t get back in my email. I need access to the place...”*.

SA testified during the hearing that she had further texts with the tenant at the new cell phone number. These texts were not provided as evidence for this hearing, so SA read them to me. SA testified that she asked the tenant for an email or address on October 12th because they applied for an early end to tenancy and they need to send the tenant notice. According to SA, the tenant responded that they could send it to the email address provided on the cover page of this decision.

SA testified that the new cell phone number is no longer in service and that the tenant is avoiding her, not responding to her texts or emails. The tenant no longer has keys to the rental unit and has stopped paying rent.

Analysis

The Residential Tenancy Branch Rules of Procedure define an agent as a person appointed by a party to act on that party’s behalf. Pursuant to Rule 6.8, the arbitrator may require an agent to provide proof of their appointment to represent a party. At the commencement of the hearing, SA would not identify herself as the landlord’s agent, implicitly stating that she was simply “helping” the named landlord without being a property manager. I find that SA lacks the authority to act as the landlord’s agent in the matter before me.

Second, the landlord seeks to end the tenancy with the tenant without giving the tenant a formal one month notice to end tenancy. Ending a tenancy by seeking an early end to tenancy under section 56 of the *Act* is an extraordinary measure, reserved for the most serious breaches of the *Act* where there is an imminent danger to the health, safety or security of another tenant or the landlord.

The purpose of serving documents under the Legislation is to notify the parties being served of matters relating to the Legislation, the tenancy agreement, a dispute resolution proceeding or a review. Another purpose of providing the documents is to allow the other party to prepare for the hearing and gather documents they may need to serve and submit as evidence in support of their position. I find that procedural fairness requires that I be satisfied the tenant has been served with the application for the early end to tenancy via expedited hearing.

Given the evidence before me, I find the tenant was not sufficiently served with the notice of expedited hearing, informing her of today’s hearing. The text messages

supplied to me for this hearing clearly indicates the tenant's inability to access her email as late as October 11th. While SA testified the tenant told her via text to send her the Notice of Dispute Resolution Proceedings via email, I do not have a signed form *RTB-51 Address for Service* document to satisfy me the tenant truly understood and acknowledged the notice to end her tenancy early could be sent to that email address. Further, SA testified that the texts sent to her regarding where to email the documents did not originate from the cell phone SA had on record for the tenant. This cell phone is no longer in service, according to SA.

As stated previously, I find the tenant was not sufficiently served with the notice of expedited hearing. Consequently, I dismiss this application with leave to reapply.

Conclusion

This 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: November 14, 2022

Residential Tenancy Branch