



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

The Landlord seeks an early end to the tenancy and order of possession pursuant to s. 56 of the *Residential Tenancy Act* (the “Act”).

J.L. and R.L. appeared as agents for the Landlord. R.D. appeared as the Tenant and was represented by his advocate R.C..

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

Service of the Landlord’s Application Materials

At the outset of the hearing, I enquired whether the Landlord has served the Tenant with its application and evidence. R.L. says that this was done by way of email. The Tenant raised issue with service via email, noting it was not an approved form of service and that the Landlord’s video evidence had not been served at all. The Tenant’s advocate testified that the Tenant has a brain injury and that service via email was also problematic as the Tenant has intermittent access to the internet.

The methods for serving documents for an application under s. 56 of the *Act* are set out under s. 89(2):

89(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.

Section 43 of the Regulations permits service by way of email provided it is a party gives it to the other as an address for service. R.L. testified that the Tenant had signed the standard form RTB-51 Address for Service form, though acknowledged the Tenant marked "N/A" in the field for his email address.

One of the most basic aspects of ensuring a procedurally fair process is that the respondent knows the case against them and can prepare themselves accordingly. This is ensured by serving the application and evidence. Though this principle is true generally, it is particularly so in this instance. The application was made under s. 56 such that no notice to end tenancy was ever served by the Landlord. Further, the service timelines are truncated due to the expedited hearing process set out under Rule 10 of the Rules of Procedure. In other words, without being properly served, the Tenant was deprived of the ability to effectively respond to the Landlord's allegations.

Under the circumstances, I am unable to find that the application was served in accordance with the *Act*. I note that the Tenant did not provide response evidence to the Residential Tenancy Branch. The method of service is more than just a technical impediment here as the Tenant's advocate states that the Tenant has intermittent access to the internet, which may explain why no response evidence was provided.

As the Landlord's application materials were not properly served, I dismiss the application with leave to reapply. The Landlord is encouraged to ensure documents have been served prior to the hearing in a method set out under the *Act* or as agreed between the parties. Prior to disconnecting, the Tenant's advocate indicates the Landlord may contact her on the Tenant's behalf.

I make no findings of fact or law with respect to the issues in dispute in the application.

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: December 16, 2022

Residential Tenancy Branch