



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPL, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for an Order of Possession for:

- Order of Possession for Landlord's Use pursuant to section 55; and
- authorization to recover the filing fee for this application, pursuant to section 72.

While the landlord's agent, CQ ("landlord"), attended the hearing by way of conference call, the tenants did not. I waited until 9:50 a.m. to enable the tenants to participate in this scheduled hearing for 9:30 a.m. During the hearing, I also confirmed from the online teleconference system that the landlord, their agent, and I were the only ones who had called into this teleconference.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. The landlord confirmed that they understood.

Preliminary Issue - Service of the Landlord's Application for Dispute Resolution

The landlord testified that they had served the tenants with the application for dispute resolution and Notice of Hearing by way of registered mail on August 23, 2022. The landlord did not submit any proof of service to support that the tenants were served with these documents. The landlord was provided some time during the hearing to locate the tracking information, but was unable to find it.

Section 89 of the *Act* establishes the following special rules for service of documents for a dispute resolution hearing.

Special rules for certain documents

89 (1) *An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:*

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
- (e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].*

(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].*

As the tenants were not in attendance to confirm service of the application, and as the landlord did not provide sufficient evidence to support that the tenants were served in accordance with one of the methods required by section 89 of the Act, the landlord's application is dismissed with leave to reapply. Liberty to reapply is not an extension of any applicable timelines.

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: January 03, 2023

Residential Tenancy Branch