



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

AAT ERP LRE MNDCT OLC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- An order that the landlord allow the tenant to access the rental unit pursuant to section 70;
- An order requiring the landlord to perform emergency repairs pursuant to section 33;
- An order to suspend or set restrictions on the landlords' right to enter the rental unit pursuant to section 70;
- A monetary award for damages or loss pursuant to section 67; and
- An order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62.

Both parties were represented at the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to make submissions, and to call witnesses. The tenant's agent said that they had no knowledge of the contents of the application and were not authorized to speak on behalf of the tenant in regards to the application. They said they were merely instructed to attend the teleconference hearing and request an adjournment.

Preliminary Issue – Adjournment Request

At the outset of the hearing the tenant's agent requested that the hearing be adjourned. The agent testified that the tenant is attending a conference on this date and is unavailable. The agent was unaware of the nature of the conference, when it was scheduled, when the tenant would be available or why the tenant had not applied to request the hearing be rescheduled at an earlier date. The agent said they had no

knowledge of the issues, whether the application was served on the respondent and had no authorization to speak on the tenant's behalf for this application.

The landlord did not consent to the hearing being adjourned and rescheduled.

Rule 7.8 of the Residential Tenancy Branch Rules of Procedure grants me the authority to determine whether the circumstances warrant an adjournment of the hearing.

Rule 7.9 lists some of the criteria to consider:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

I find that the tenant has provided little evidence in support of their request for an adjournment. Their agent was not provided with substantive information about the reason the tenant was unavailable. The agent said that the tenant was attending a conference but was unable to state when the conference was scheduled, the nature of the conference, or when the tenant would next be available. While the agent said they believe that the tenant would be available on any other date, they confirmed they had no knowledge of the tenant's schedule. The tenant submitted into documentary evidence a single typewritten page stating that they are "in a meeting all day, and unfortunately this meeting cannot be changed." The tenant provides little other information about this scheduling conflict.

The agent had no knowledge of when the tenant became aware of their inability to attend the hearing and what steps they have taken prior to the hearing date. The agent said they were tasked by the tenant to attend and make an oral request for an adjournment about a week prior to the hearing. The agent said they were solely tasked with making an oral request for an adjournment and had no instructions or knowledge of the substance of the application.

Under the circumstances I find that the tenant has not met the criteria established for granting an adjournment. The onus is on the applicant to prove their claim on a balance of probabilities. The tenant provided their agent with little information and details as to the circumstances leading to this adjournment request. The agent testified that the

tenant instructed them to seek an adjournment several days prior to the hearing date. As such, I find that the tenant knew of their scheduling conflict in advance and could have made other arrangements. The tenant could have provided full instructions to their agent but failed to do so. I find that the need for an adjournment and the prejudice to the tenant arises as direct result of the tenant's failure to take reasonable steps. As such, the tenant has not met the criteria established for granting an adjournment.

Issue(s) to be Decided

Is the tenant entitled to any of the relief sought?

Background and Evidence

The landlord disputed that they had been served with any of the tenant's documentary evidence or application. The tenant's agent had no knowledge of how or if any of the tenant's materials were served. The agent similarly had no knowledge of whether the tenant had been served with any of the landlord's evidence.

The agent said that they have no knowledge of the contents of the tenant's application and made no submissions pertaining to the application.

Analysis

Section 89(1) of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution:

89(1) An application for dispute resolution,...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 document]...*

As the agent had no knowledge of how or if the tenant's materials were served and the landlord disputes service I find that there is insufficient evidence that any of the tenant's materials were served in accordance with the *Act*.

Consequently, I dismiss the tenant's application in its entirety with leave to reapply.

Conclusion

The tenant's 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: April 30, 2019

Residential Tenancy Branch