



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPUM-DR, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (“Act”), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- an Order of Possession for unpaid rent and utilities, pursuant to section 55;
- a monetary order for unpaid rent and utilities, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 21 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

During the hearing, I was required to repeat information to the landlord, who was unable to answer my questions. I informed the landlord that if she was unable to understand or communicate with me in English, I would not be able to conduct the conference, as it is in English only. I notified her that she was required to bring an interpreter to the hearing if she required assistance with English. The landlord claimed that she did not need help but that I should speak slowly so she could understand me.

Preliminary Issue – Inappropriate Behaviour by the Landlord during the Hearing

Rule 6.10 of the Residential Tenancy Branch *Rules of Procedure* states the following:

6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing

Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

Throughout the conference, the landlord interrupted me, talked at the same time as me, argued with me, and yelled at me. I cautioned the landlord multiple times to stop yelling at me and interrupting me or I would end the conference.

I caution the landlord to not engage in the same inappropriate and disruptive behaviour at any future hearings at the RTB, as this behaviour will not be tolerated and she may be excluded from future hearings. In that event, a decision will be made in the absence of the landlord.

Preliminary Issue – Direct Request Proceeding and Service

This hearing was originally scheduled as a direct request proceeding, which is a non-participatory hearing. An “interim decision,” dated September 16, 2019, was issued by an Adjudicator for the direct request proceeding. The interim decision adjourned the direct request proceeding to this participatory hearing.

The landlord was required to serve the tenant with a copy of the interim decision, the notice of reconvened hearing and all other required documents, within three days of receiving it, as outlined in the interim decision itself.

The landlord said that she received the interim decision on September 20, 2019. She then claimed that she received it on September 16, 2019. The landlord stated that she served the above required documents to the tenant on September 21, 2019, and then changed her testimony to September 16, 2019.

The landlord provided a Canada Post tracking number for the September 16, 2019 registered mailing. When I informed the landlord that the above tracking number and date was the same as for the original direct request application documents, not the interim decision and notice of reconvened hearing documents, she said that she could give me another number for another mailing. She said that she had another application that she was confusing with this application.

I gave the landlord multiple opportunities to look for her evidence during the hearing, as she did not have the correct service information in front of her. I repeated the same information to the landlord throughout the hearing and she was unable to understand me or answer my questions. It took approximately 20 minutes of hearing time to obtain service evidence from the landlord, yet she was still unable to provide me with correct, accurate information.

I find that the tenant was not served with the interim decision and notice of reconvened hearing as required by section 89 of the *Act*. The landlord did not know when she received the interim decision or when she served it. The landlord provided me with three different dates and the same mailing information as was used for her original application, not for the new documents she was required to serve. The landlord also gave me information from another file number, which was not part of this application.

I notified the landlord that her application was dismissed with leave to reapply, except for the order of possession and the filing fee. The landlord said that the tenant had vacated the rental unit and moved to Ireland, so she did not require the order of possession. I informed her that she would be required to file a new application and provide proof of service at the next hearing, if she chooses to pursue this matter further.

When I notified the landlord about my decision, she became upset and asked for my name. I informed her about my name again, as I had done at the beginning of the hearing, and notified her that my name would also be on a copy of this written decision that would be sent to her after the hearing was over.

I notified the landlord that she could bring an interpreter to assist her with English at the next hearing so that she could understand and communicate properly with the Arbitrator.

I informed the landlord she would be required to provide evidence regarding service of her application at the next hearing and that she should be prepared to do so at the beginning of the hearing. I notified her that since the tenant had moved out, she was told he lived in Ireland, and she submitted an application for substituted service for this hearing, she would be required to prove service for the next hearing and make any necessary substituted service application prior to the next hearing.

Conclusion

The landlord's application for an order of possession and to recover the \$100.00 filing fee is dismissed without leave to reapply.

The landlord's application for a monetary order for unpaid rent and utilities 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 26, 2019

Residential Tenancy Branch