



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ATIRA PROPERTY MANAGEMENT INC and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPRM-DR, FFL

### Introduction

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

- an order of possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, 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 22 minutes. The landlord's agent ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she was the property manager for the landlord company named in this application and that she had permission to speak on its behalf.

### Preliminary Issue – Inappropriate Behaviour by the Landlord during the Hearing

Rule 6.10 of the Residential Tenancy Branch ("RTB") *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, and argued with me. I cautioned the landlord multiple times to stop interrupting me and arguing with me or I would end the conference.

I had to repeat my questions for the landlord multiple times throughout the conference. The landlord had phones ringing in the background during this hearing. The landlord asked for extra time during the hearing to look up service information online. I gave the landlord extra time during the hearing and when she provided the incorrect service information, she began arguing with me. I explained why I could not proceed with the hearing and she became upset, arguing with me and not allowing me to speak. This hearing lasted 22 minutes because I allowed the landlord to look up service information during the hearing and because I had to repeat my questions and explanations to her.

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 November 18, 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 did not state when she received the interim decision. She stated that the interim decision was sent to the tenant by registered mail on November 4, 2019. When I asked the landlord whether she was sure about that date, she said that she was and had just looked it up online during the hearing. She did not provide a Canada Post tracking number during the hearing.

Section 89(1) of the *Act* outlines the methods of service for an application for dispute resolution, which reads in part as follows (my emphasis added):

*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 documents].*

Residential Tenancy Policy Guideline 12 states the following, in part (my emphasis added):

*Registered mail includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a **named person** is available.*

*Proof of service by Registered Mail should include the original Canada Post Registered Mail **receipt containing the date of service, the address of service, and that the address of service was the person's residence at the time of service,** or the landlord's place of conducting business as a landlord at the time of service as well as a **copy of the printed tracking report.***

I notified the landlord that she could not have served the tenant with the interim decision and notice of reconvened hearing on November 4, 2019, because the interim decision was issued two weeks later on November 18, 2019. The landlord did not provide any other date for service. The landlord did not indicate when she received the interim decision. The tenant did not appear at this hearing to confirm service of the above documents.

Accordingly, I find that the landlord failed to prove service in accordance with section 89(1) of the *Act* and Residential Tenancy Policy Guideline 12 and the tenant was not served with the interim decision and notice of reconvened hearing.

I notified the landlord that the landlord's application was dismissed with leave to reapply, except for the filing fee. The landlord said that she still required an order of possession even though the tenant had moved out, because she was worried that he would come back, since the landlord did not change the locks and left the unit open to wait for this hearing. I notified her that the landlord would be required to file a new application, provide proof of service at the next hearing, and be ready to proceed at the start of the hearing, if the landlord wished to pursue this matter further.

When I notified the landlord about my decision, she became upset. She asked why the landlord's application was being dismissed again. I notified her that the application had not been dismissed before, it had been adjourned from the direct request paper process to this oral hearing, since the landlord was not successful in the direct request. I repeatedly notified the landlord that I could not proceed with the hearing because she was unable to prove service of the interim decision and notice of reconvened hearing and the tenant was not present to confirm service. The landlord was angry and kept arguing with me and talking at the same time as me, as I tried to explain my decision. I asked the landlord to allow me to speak without her interrupting and she continued to argue with me and speak at the same time as me. I obtained the landlord's contact information and asked her if she had any questions before ending the hearing. I thanked the landlord for attending the hearing.

### Conclusion

The landlord's application to recover the \$100.00 filing fee is dismissed without leave to reapply.

The landlord's application for an order of possession for unpaid rent and a monetary order for unpaid rent 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: December 27, 2019

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Residential Tenancy Branch