



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM DECISION

Introduction

This hearing was scheduled to deal with the tenant's application pursuant to the Residential Tenancy Act ("Act") for an order to cancel a one month notice to end tenancy for cause pursuant to sections 47 and 55 and to recover the filing fee pursuant to section 72.

Both parties attended the hearing; the landlord was assisted by a certified interpreter. At the commencement of the hearing, the tenant advised me that she was unable to provide the landlord with all her evidence because she was self-isolating in accordance with the current covid-19 state of emergency. The tenant testified she had additional documents she needed to print out and provide to the landlord and to the Residential Tenancy Branch, however she was unable to do so because she couldn't obtain a printer or ink during the pandemic.

Second, the tenant testified she had not received any of the landlord's evidence. The landlord acknowledged she did not serve the tenant with any of the evidence she was intending on relying upon prior to the hearing.

For these reasons, the tenant sought an adjournment of the hearing.

Analysis

Ministerial Order M089 was issued March 30, 2020, pursuant to the State of Emergency declared on March 18, 2020. In response to *Ministerial Order M089*, the director of the Residential Tenancy Branch issued the *Residential Tenancy Branch Practice Directive 2020-02: 2020 Covid-19 Pandemic: Extending Time Limits, Adjournments and Settlements March 30, 2020*.

Under the heading, *Supplemental Practice Directives for 2020 COVID-19 Pandemic*, the Practice Directive states:

In cases where an arbitrator has the authority to extend the time limit for making an application for dispute resolution or applying for a review, when considering a request

*from a landlord or tenant to do so because they were unable to meet the time limit in light of the COVID-19 pandemic, **arbitrators are directed to consider the COVID-19 pandemic as an exceptional circumstance** for the purposes of section 66 of the Residential Tenancy Act.*

*While Policy Guideline 36: Extending a Time Period ordinarily requires “persuasive evidence to support the truthfulness of what is said”, in the current circumstances, a party will only need to provide a reasonable explanation of why they or someone on their behalf was unable to file the application within the required time limits. If an adequate explanation is provided, **arbitrators should exercise their discretion to ensure a party affected by the COVID-19 pandemic is not prejudiced.***

...

In cases where evidence has not been received by the RTB or served on another party within the time limits set out in the Rules of Procedure due to the COVID-19 pandemic, arbitrators will determine whether to exercise their discretion to accept the late-filed or late-served evidence as set out in Rule 3.17. Arbitrators will consider the circumstances, including:

- 1. the explanation as to why the party was not able to submit their evidence online or serve it on the other party;*
- 2. the prejudice to the party and the impact on a fair outcome if the evidence is not considered;*
- 3. any potential prejudice to another party, including prejudice that may arise from adjourning the proceedings so that the other party has an opportunity to review and respond to that evidence, if they were not served with it or served late; and*
- 4. the general principles of procedural fairness.*

Using the criteria above, I considered the following:

1. The landlord acknowledged she did not provide her documentary evidence to the tenant, depriving the tenant the opportunity to consider it. Likewise, the tenant was unable to serve all her evidence upon the landlord because she was unable to print it due to the inability to purchase ink for her printer during the covid-19 pandemic. The landlord was also denied the opportunity to consider the tenant's evidence.
2. This would prejudice both the tenant and the landlord as both parties would have incomplete evidence before them and neither party would be able to provide a full answer and defense to the claim.

3. While the landlord's position could potentially be prejudiced by delaying the effective date of an order of possession if the hearing was successful; the prejudice is minimized by the fact that the courts and court bailiffs are currently not enforcing orders of possession during the pandemic.
4. Procedural fairness requires that all parties and the director are in possession of the evidence the parties intend to rely upon for the hearing.

Given this determination, I am satisfied the hearing should be adjourned for the parties to exchange all of the documents they intend to rely upon for the reconvened hearing. The parties agreed to attend the reconvened hearing set for Thursday, May 21, 2020 at 9:30 a.m.

I make the following orders:

- **I order** this hearing will be reconvened on **Thursday, May 21, 2020 at 9:30 a.m.**, the date identified in the Notice of Hearing documents attached to this decision;
- **I order** that this not an opportunity for the tenant to amend this Application for Dispute Resolution to include any additional claims;
- **I order** that this not an opportunity for the landlord to submit an Application for Dispute Resolution to be crossed with this Application for Dispute Resolution.
- **I order** that both parties are to send to the opposing party and to the Residential Tenancy Branch all the documents they intend to rely upon for the reconvened hearing by 9:00 p.m. on Friday, May 21, 2020;

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: May 11, 2020