



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, MNR-DR

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; and
- a monetary order for unpaid rent, pursuant to section 67.

The landlord, the landlord's translator, and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing began at 9:30 a.m. I disconnected the tenant from the hearing at 9:37 a.m. I ended the hearing at 9:47 a.m. This hearing lasted approximately 17 minutes total.

The landlord confirmed that she owns the rental unit. She said that her translator had permission to assist her at this hearing.

Neither party made any adjournment or accommodation requests at this hearing.

Preliminary Issue – Inappropriate Behaviour by the Tenant during this Hearing

Rule 6.10 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("Rules") 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.

At the outset of this hearing, the tenant was extremely upset, angry and agitated. The tenant could be heard ordering something and talking to other people near him, during this hearing. When I announced the tenant's name and asked whether he was present on the teleconference line, the tenant yelled that he could not hear two conversations at once. I asked again whether the tenant was present on the line, and he yelled for me to "hold on" because he was talking to someone else. When I informed the tenant that I had to proceed with the hearing, he yelled that I was not on the line at 9:00 a.m. I informed him that the hearing began at 9:30 a.m., not 9:00 a.m., as per the notice of hearing for this matter. The tenant continued yelling at me, so I had to mute his end of the telephone line, so that I could speak and confirm whether the landlord was on the line.

Rule 6.11 of the RTB *Rules* states the following:

6.11 Recording prohibited

Persons are prohibited from recording dispute resolution hearings, except as allowed by Rule 6.12. Prohibited recording includes any audio, photographic, video or digital recording.

At the outset of this hearing, I notified both parties that recording of this hearing was not permitted by anyone. The landlord and her translator affirmed, under oath, that they would not record this hearing.

The tenant stated that he was recording this hearing. I notified him again that recording was not permitted. The tenant said that he wanted to record the hearing. He asked whether he should stop recording. I asked him to stop recording. The tenant then claimed that he stopped recording. I informed him that if he attempted to use or submit any recording of this hearing, he could be subject to an RTB administrative penalty and fine. The tenant became upset and asked whether I was listening to him or if I forgot what he said, because he said he stopped recording. I notified him again that if he attempted to submit any portion of this hearing that he recorded, he could be subject to an RTB administrative penalty and fine. I asked whether he understood my direction and the tenant continued arguing with me and interrupting me. I informed the tenant that I could disconnect him from this hearing and continue in his absence, if he continued with his inappropriate behaviour. The tenant continued arguing with me and interrupting me.

I informed the tenant that I was disconnecting him from this hearing. I notified him that he was not following my directions or complying with the *Rules*. Therefore, after 7 minutes in this hearing, I disconnected the tenant from the hearing at 9:37 a.m. I informed the landlord that the tenant was disconnected from this hearing and I would continue in his absence.

I find that the tenant did not comply with Rules 6.10 and 6.11 of the RTB *Rules*, as noted above. I find that the tenant was recording this hearing, I informed him that it was not permitted, the tenant argued with me, and I could not confirm that the tenant stopped recording. I further find that the tenant was angry, upset, yelling, and interrupting me throughout this hearing. I was unable to conduct the hearing with the tenant present, as neither I nor the landlord could speak without the tenant interrupting.

Preliminary Issue – Service of Landlord’s Application

The landlord confirmed that the tenant moved out of the rental unit on May 20, 2021, and she did not require an order of possession, just a monetary order for unpaid rent. The landlord’s application for an order of possession is dismissed without leave to reapply.

This hearing was originally scheduled as a direct request proceeding, which is a non-participatory hearing. The direct request proceeding is based on the landlord’s paper application only, not any submissions from the tenant. An “interim decision,” dated May 20, 2021, 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 testified that the tenant was served with the above documents, by way of email on May 28, 2021, to the tenant’s niece’s email address. The landlord provided a copy of this email. She claimed that the tenant provided this email address to the landlord’s daughter by way of text message. She did not provide a copy of the text message for this hearing.

Section 89(1) of the *Act* states the following (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];*
- (f) by any other means of service provided for in the regulations.***

Section 43(2) of the *Residential Tenancy Regulation* ("Regulation") states the following (my emphasis added):

*(2) For the purposes of section 89 (1) (f) [special rules for certain documents] of the Act, the documents described in section 89 (1) of the Act may be given to a person by **emailing a copy to an email address provided as an address for service by the person.***

I find that the landlord did not serve the tenant with the above required documents, as required by section 89 of the *Act* and section 43 of the *Regulation*.

I find that the landlord failed to provide sufficient documentary proof of an email address provided by the tenant and when that email was given to the landlord. The landlord claimed that her daughter received a text message, but she did not provide a copy for this hearing. The landlord had ample time from filing this application on April 23, 2021 to this hearing date of September 21, 2021, a period of almost five months, to provide the above information.

Further, the tenant provided a personal email address during this hearing, for me to send a copy of this decision to him after this hearing is over. The tenant's email address is different than the tenant's niece's email address contained on the landlord's email of May 28, 2021.

During this hearing, I was unable to confirm with the tenant whether he received a copy of all of the above required documents from the landlord or whether he found out about the hearing directly from the RTB.

I notified the landlord that her monetary application was dismissed with leave to reapply. I informed her that she could file a new application and provide proof of service, if she wants to pursue this matter further. The landlord confirmed her understanding of same.

Although the tenant was excluded after 7 minutes in this hearing, I find that his rights are not prejudiced since the landlord's monetary application is dismissed with leave to reapply. I find that the landlord's rights are not prejudiced, as she has an opportunity to reapply for a monetary order and the tenant will have an opportunity to respond if the landlord reapplies. The landlord confirmed that the tenant moved out and she does not require an order of possession, so this monetary application is not an urgent issue.

Conclusion

The landlord's application for an order of possession for unpaid rent is dismissed without leave to reapply.

The landlord's application for 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: September 21, 2021

Residential Tenancy Branch