



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPU-DR, MNU-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 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 20 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.

This hearing began at 9:30 a.m. and ended at 9:50 a.m. I monitored the teleconference line throughout this hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only people who called into this teleconference.

The landlord confirmed his name and spelling. He stated that he owns the rental unit. He confirmed the rental unit address. He provided his email address for me to send a copy of my decision to him after this hearing.

At the outset of this hearing, I informed the landlord that recording of this hearing was not permitted by anyone, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("Rules"). The landlord affirmed, under oath, that he would not record this hearing.

I explained the hearing process to the landlord. He had an opportunity to ask questions, which I answered. He did not make any adjournment or accommodation requests.

At the outset of this hearing, the landlord confirmed that the tenant vacated the rental unit on December 12, 2021, pursuant to an order of possession issued at a previous RTB hearing. He said that he did not require an order of possession against the tenant. I notified him that this portion of his application was dismissed without leave to reapply.

Preliminary Issue – Service of Landlord’s Application

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 December 9, 2021, was issued by an Adjudicator for the direct request proceeding. The interim decision adjourned the direct request proceeding to this participatory hearing.

The interim decision states the following on page 2, as to why this matter was adjourned to a participatory hearing:

I have reviewed all documentary evidence and I find that the tenant’s name on page one of the tenancy agreement does not match the tenant’s name on the Application for Dispute Resolution.

As this is an ex parte proceeding that does not allow for any clarification of the facts, I have to be satisfied with the documentation presented. The discrepancy in the tenant’s name raises a question that can only be address through a participatory hearing.

The landlord said that he thought the tenant was using a fake name (“MB”) on page 1 of the tenancy agreement but used his real name (“PD”) on page 6 on the signature page of the tenancy agreement. However, the landlord named “DP” as the tenant in his application and said that he did not want to change it.

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 stated that he served the above documents to the tenant on December 12, 2021. He said that he sent it by text message and the tenant replied by text message, so he provided screenshots of the above text messages.

I notified the landlord that there were no dates indicated on the screenshots of the text messages that he provided. I informed him that there were characters in a different language, with no English language translation, on the screenshots of the text messages. The landlord stated that the text messages stated “Sunday” and “12/12,” but he did not have it translated to English.

The landlord stated that he was permitted to serve the tenant with the above documents by text message, pursuant to a substituted service decision, dated January 6, 2022 (“SS decision”) made by a different Adjudicator.

The SS decision states on page 3 (emphasis in original):

For this reason, I allow the landlord substituted service of the Notice of Dispute Resolution Proceeding, with supporting documents and written evidence, by text message to the tenant at the phone number indicated on the first page of this decision.

I order the landlord to provide proof of service which may include a screenshot of the sent documents, a reply from the tenant, or other documentation to confirm the landlord has served the tenant in accordance with this order.

Conclusion

The landlord is granted an order for substituted service. The landlord may serve the tenant the Notice of Dispute Resolution Proceeding, with supporting documents and written evidence, along with a copy of this substituted service decision, to the tenant by text message as set out above.

The landlord claimed that he did not serve the SS decision to the tenant because he forgot.

Accordingly, I find that the landlord did not serve the tenant with the SS decision, as required by section 89 of the *Act* and Rule 3.1 of the *RTB Rules*.

I further find that the landlord did not provide sufficient evidence that he served the tenant with the interim decision and notice of reconvened hearing, as required by section 89 of the *Act* and Rule 3.1 of the RTB *Rules*. There are no dates of service indicated on the screenshots of the text messages supplied by the landlord, as the landlord has not provided English language translations of the foreign language characters in the text messages.

Moreover, the landlord claims to have served the tenant with the interim decision and notice of reconvened hearing on December 12, 2021, prior to being given approval to serve by text message in the SS decision, dated January 6, 2022. The landlord filed his substituted service application to obtain approval to serve by text message on December 12, 2021. Text message is not an approved method of service under sections 88 or 89 of the *Act*, unless specifically granted pursuant to section 71 of the *Act*, by an Adjudicator or Arbitrator, after a substituted service application is filed by the applicant first.

The tenant did not attend this hearing to confirm service of the above documents. The landlord was given ample time of 20 minutes during this hearing in order to look up information and to provide evidence regarding service. The landlord stated that he was searching through his phone, text messages, emails, and other evidence during this hearing.

The landlord originally filed the direct request application on October 28, 2021. The interim decision and notice of hearing are dated December 9, 2021. The SS decision is dated January 6, 2022. This hearing occurred on March 25, 2022. The landlord had ample time of over 2.5 months from January 6, 2022 to March 25, 2022, to provide the above information and documentation regarding the tenant's legal name, and service of the interim decision, notice of reconvened hearing, and SS decision.

The landlord indicated the tenant as DP, rather than PD, in this application and did not want to change this, despite being given the opportunity to do so. The landlord has not provided sufficient evidence of the tenant's legal name, which is indicated as MB on the first page of the tenancy agreement.

I notified the landlord that his monetary application for unpaid rent and utilities was dismissed with leave to reapply. I informed him that his application to recover the \$100.00 filing fee was dismissed without leave to reapply.

I notified the landlord that he could file a new application and pay a new filing fee, if he wants to pursue this matter in the future. He confirmed his understanding of same.

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: March 25, 2022

Residential Tenancy Branch