



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding THE ACADIAN INN CANADA BEST VALUE INN AND
SUITES and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for an order of possession, pursuant to section 54.

This hearing was originally convened on August 18 and adjourned to August 29, 2022. This decision should be read in conjunction with the Interim Decision dated August 18, 2022.

On August 29, 2022 I left the teleconference connection open until 9:41 A.M. to enable the landlord to call into this teleconference hearing scheduled for 9:30 A.M. The landlord did not attend the hearing. Advocate TM (the advocate) represented tenant DH. The advocate was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. 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 advocate and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending party affirmed she understands the parties are not allowed to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

The advocate affirmed tenant DH is in poor health condition in a hospital and without access to a telephone. The advocate stated the tenant needs to provide testimony and the advocate is not prepared to proceed without the tenant. The advocate requested an adjournment so the tenant can attend the hearing and provide testimony.

The interim decision dated August 18, 2022 states:

The advocate affirmed the tenant could not attend the hearing because the tenant is currently in the hospital. The advocate stated the tenant needs to provide testimony and the advocate is not prepared to proceed without the tenant.

[...]

Based on the advocate's testimony, I find it is fair to adjourn the hearing to allow the tenant to attend. I find the need for the adjournment does not arise out of intentional actions of the tenant and the adjournment is not unfair to the landlord.

I warn the tenant that there will be no further adjournment for the same reason. The tenant or his representative must be prepared to attend the next hearing and provide the necessary testimony.

Rule of Procedure 7.3 states:

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The interim decision clearly stated that a new adjournment would not be granted if the tenant or the tenant's advocate could not attend. The advocate did not explain why she was not able to provide testimony on behalf of the tenant on August 29, 2022.

Considering the tenant's health condition, the interim decision and Rule of Procedure 7.3, I find it is fair to dismiss this application with leave to reapply.

Conclusion

I dismiss the tenant's application 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: August 30, 2022

Residential Tenancy Branch