



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPU-DR

Introduction

This hearing dealt with the landlord's application, filed on May 2, 2022, pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession for unpaid rent and utilities, pursuant to section 55.

The tenant did not attend this hearing, which lasted approximately 16 minutes. The landlord and the landlord's wife 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 11:00 a.m. and ended at 11:16 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, the landlord's wife, and I were the only people who called into this teleconference.

The landlord's wife did not testify at this hearing, as she would not affirm an oath. When I asked her to affirm the oath, the landlord began having a separate conversation with her in a different language that I could not understand. The landlord told me that he and his wife always communicate in a different language. I informed the landlord that his wife had to affirm an oath in order to provide testimony at this hearing. The landlord then claimed that he would be the only speaker at this hearing.

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

I informed the landlord that recordings of any RTB hearings are not permitted by any participants, as per Rule 6.11 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure* (“Rules”). At the outset of this hearing, the landlord affirmed, under oath, that neither he, nor his wife, would record this hearing.

I explained the hearing process to the landlord. I informed him that I could not provide legal advice to him, and he could hire a lawyer if he required same. He had an opportunity to ask questions. He did not make any adjournment or accommodation requests.

The landlord stated that he did not require any TTY or hearing assistance. He said that he was using a speakerphone and could hear me properly. I repeated and rephrased information for the landlord throughout this hearing, when he requested same. The landlord stated that he did not require any translation assistance at this hearing.

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 June 27, 2022, was issued by an Adjudicator to the landlord, for the direct request proceeding. The interim decision adjourned the landlord’s application from the direct request proceeding to this participatory hearing. A notice of reconvened hearing, dated June 28, 2022, was also issued by the RTB to the landlord. The landlord confirmed the above information during this hearing.

The interim decision states the following at page 2, as to why the application was adjourned to this participatory hearing:

Section 46(6) of the Act allows the landlord to treat the unpaid utilities as unpaid rent, 30 days after the tenant is given a written demand for them. I find that there is no written demand in the landlord’s evidence submissions demonstrating the landlord was allowed to treat the utilities as unpaid rent and issue a 10 Day Notice for unpaid utilities.

I also note that section 13(2)(f)(v) of the Act establishes that a tenancy agreement is required to identify the day in the month on which the rent is due. I

find the residential tenancy agreement(s) submitted by the landlord has no date indicating the day in the month on which the rent is due.

Finally, I note section 13(2)(f)(iv) of the Act requires a tenancy agreement to set out the amount of the rent payable. I find that the landlord submitted two versions of the tenancy agreement: one indicating a monthly rent in the amount of \$2,200.00 and one that does not specify the amount of the monthly rent. I find I am not able to determine whether the amount of the monthly rent appeared on the agreement at the time it was signed by the tenant.

I find these discrepancies raise questions that can only be addressed in a 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 interim decision states the following at page 3 (bold emphasis in original):

Notices of Reconvened Hearing are enclosed with this interim decision. The applicant must serve the Notice of Reconvened Hearing, the interim decision, and all other required documents, upon the tenant within three (3) days of receiving this decision in accordance with section 89 of the Act.

The landlord stated that he served his evidence package to the tenant on September 13, 2022. I repeatedly notified the landlord that I was asking about service of the interim decision and notice of reconvened hearing, which adjourned the direct request application to this participatory hearing, not service of evidence. The landlord then claimed that he served the above documents to the tenant by way of posting to the door on May 2, 2022. When I asked how this was possible, since this was prior to the above documents being issued, the landlord then said he served it by posting on June 2, 2022. When I again asked how this was possible, the landlord said that he could not remember the date of service.

I find that the landlord did not serve the tenant with the interim decision or notice of reconvened hearing, as required by section 89 of the Act, Rule 3.1 of the RTB Rules, and Residential Tenancy Policy Guideline 12. The landlord provided two dates of May 2, 2022 and June 2, 2022, which are both prior to the above documents being issued on June 27, 2022 and June 28, 2022. The date of September 13, 2022 was for service of

evidence, not the above documents, and is not within the 3-day deadline of June 28, 2022. The tenant did not attend this hearing to confirm service of the above documents.

The landlord was given ample time of 16 minutes during this hearing to provide evidence regarding service.

The landlord originally filed the direct request application on May 2, 2022. The interim decision is dated June 27, 2022, and the notice of reconvened hearing is dated June 28, 2022. This hearing occurred on October 4, 2022.

The landlord had ample time from June 28, 2022 to October 4, 2022, a period of over 3 months, to provide the above information and documentation regarding service of the interim decision and notice of reconvened hearing.

I notified the landlord that his application was dismissed with leave to reapply. I notified him that he was at liberty to file a new application, if he wants to pursue this matter in the future.

The landlord became upset and began arguing with me after I provided him with my decision and asked if he had any questions. The landlord said that the RTB always favours tenants. After repeatedly asking the landlord whether he had any questions about my decision, the landlord continued to argue with me. I informed the landlord that the hearing was over and closed the conference.

Conclusion

The landlord's application 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: October 04, 2022

Residential Tenancy Branch