



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes RR, OLC, MNDCT

Introduction

This hearing was scheduled to deal with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

Both parties attended the hearing. Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. Both parties confirmed that they understood.

Preliminary Issue - Service of the Tenant's Application for Dispute Resolution and Adjournment Request

The tenant testified that their mother had passed away in December 2022, and they did not have an opportunity to obtain the services of an advocate, or serve any hearing documents on the landlords. The tenant was not prepared to proceed with the scheduled hearing, and requested an adjournment in order to accomplish these things.

The landlords responded in the hearing that they only found out about the hearing after receiving a reminder email from the RTB. The landlords testified that they were extremely stressed as they attempted to prepare their evidentiary materials for this hearing without any proper notice. DK testified that they were 70 years old, and is

negatively affected by the stress of any further delay in these proceedings. The landlords opposed the adjournment as they felt that the tenant had ample time to serve their documents and prepare for this proceeding.

Section 89 of the *Act* establishes the following special rules for service of documents.

Special rules for certain documents

89 (1) *An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, 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].*

It is undisputed that the tenant failed to serve the landlords with their application in accordance with section 89 of the *Act*. The tenant requested an adjournment to serve the landlords, and obtain assistance of an advocate for these proceedings.

In deciding whether the tenant's adjournment application would be granted, I considered the following criteria established in Rule 7.9 of the *RTB Rules of Procedure*, which includes the following provisions:

Without restricting the authority of the arbitrator to consider the other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- the oral or written submissions of the parties;*
- the likelihood of the adjournment resulting in a resolution;*
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment: and*

- *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
- *the possible prejudice to each party.*

Although I am sympathetic towards the fact that the tenant had lost their mother in December 2022, I am not satisfied that the tenant had established how this adjournment request was due to issues beyond their control. I find that the tenant had over four months to serve the landlords, but failed to provide a reasonable explanation of why they did not do so. The tenant did not provide any evidence to support their efforts to obtain assistance with this matter, or why they could not properly serve the landlords with the hearing documents.

I find that the landlords have been highly impacted by the tenant's failure to properly serve the landlords, and that they were subjected to undue stress as they attempted to prepare the best they could for these proceedings. I find that any further delays would be prejudicial to the landlords as they were prepared to proceed. As the onus is on the applicant to properly serve the respondents, and as I am not satisfied that the adjournment request was not due to the intentional actions or neglect of the tenant, the request for an adjournment was not granted.

As the tenant failed to properly serve the landlords with their application and hearing documents in accordance with section 89 of the *Act*, I dismiss this entire application with leave to reapply. Liberty to reapply is not an extension of any applicable timelines.

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 01, 2023

Residential Tenancy Branch