



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **ET**

Introduction

This hearing was convened by conference call as a result of the Landlord's application for dispute resolution (Application) under the *Residential Tenancy Act* (Act). The Landlord seeks:

- an early termination of the tenancy and an Order of Possession pursuant to section 56 of the Act.

The original participatory hearing of the Application was held on June 15, 2023 (Original Hearing). The Landlord and the Tenant attended the Original Hearing. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I informed the parties that the *Residential Tenancy Branch Rules of Procedure* (RoP) prohibit persons from recording dispute resolution hearings and, if anyone was recording the hearing, to immediately stop recording the proceeding. A witness (TD) was called during the Original Hearing to provide testimony on behalf of the Landlord. The Landlord and the Tenant's agent (JH) attended the Original Hearing and they were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Original Hearing was scheduled for one hour and there was insufficient time to take all the parties' testimony and allow rebuttals. Pursuant to Rule 7.8 of the RoP, I adjourned the hearing and issued an interim decision dated June 16, 2023 (First Interim Decision). In the First Interim Decision, the Landlord was ordered to re-serve her evidence on the Tenant and the Tenant was ordered to re-reserve his evidence on the Landlord. The Landlord and Tenant were ordered not to serve any additional evidence on each other. Copies of the Notice of Adjournment and the First Interim Decision were served on the parties by the Residential Tenancy Branch (RTB). The hearing for the first adjourned hearing (First Adjourned Hearing) was scheduled for June 27, 2023. The Landlord and the Tenant attended the First Adjourned Hearing and they were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The parties acknowledged service of their evidence on each other. Two witnesses (LA and GB) were called during the First Adjourned Hearing to provide testimony on behalf of the Landlord.

The First Adjourned Hearing was scheduled for one hour and there was insufficient time to take all the parties' testimony and allow rebuttals. Pursuant to Rule 7.8 of the RoP, I adjourned the hearing and issued an interim decision dated June 29, 2023 (Second Interim Decision). In the Second Interim Decision, the parties were ordered not to serve each other, or submit to the RTB, with any additional evidence. The hearing for the second adjourned hearing (Second Adjourned Hearing) was scheduled for 9:30 am on July 10, 2023. Neither the Landlord nor Tenant attended the Second Adjourned Hearing. The line remained open while the phone system was monitored for ten minutes and no participant called into the hearing during this time. I confirmed the correct call-in numbers and participant codes were provided in the Notice of Dispute Resolution Proceeding.

At the Original Hearing, the Landlord stated she served the Notice of Dispute Resolution Proceeding (NDRP) on the Tenant in-person in the presence of three police officers on June 7, 2023. The Tenant acknowledged he received the NDRP. As such, I find the NDRP was served on the Tenant pursuant to the provisions of section 89 of the Act.

Preliminary Matter – Service of Landlord's Evidence on Tenant

The Landlord stated she served the Tenant with a USB memory stick containing her evidence at the time she served the Tenant with the NDRP. The Tenant denied the Landlord provided him with a USB memory stick at the time she served the NDRP on him in-person. The Landlord admitted she did not have a witness who saw her serve the Tenant with the USB memory stick and there was no other evidence to indicate that the Tenant received the USB memory stick. As such, I find the Landlord has not proven, on a balance of probabilities, that the Landlord's evidence was served on the Tenant. In the First Interim Decision, I ordered the Landlord to re-reserve her evidence on the Tenant.

Preliminary Matter – Service of Tenant's Evidence on Landlord

The Tenant stated he served his evidence on the Landlord by email on June 7, 8 and 12, 2023. The Landlord denied receiving the Tenant's evidence. The Tenant stated the Landlord and Tenant regularly corresponded with each other by email. The Landlord stated she no longer reviews emails from the Tenant because the Tenant was harassing her. The Tenant could not provide any reference in the tenancy agreement

between them that the Tenant could serve the Landlord with documents under the Act by email nor did the Tenant provide any document in which the Landlord agreed to service of documents by email. As such, I find the Tenant has not proven, on a balance of probabilities, that the Tenant's evidence was served on the Landlord. In the First Interim Decision, I ordered the Tenant to re-reserve his evidence on the Landlord.

Preliminary Matter – Dispute of GB's Age to Give Testimony

As noted above, GB was called to give testimony at the First Adjourned Hearing. The Landlord stated GB is her 16 year old daughter. JH challenged the age of GB to provide testimony for these proceedings. I affirmed GB to tell the truth and, when I asked, GB stated she knew the difference between the truth and a lie. I will admit the GB's testimony for these proceedings and consider the relevance of her testimony vis-à-vis its consistency with the testimony of the parties and other witnesses when making my findings of fact.

Preliminary Matter – Dismissal of Application

As noted above, neither the Landlord nor Tenant attended the Second Adjourned Hearing even though the line remained open while the phone system was monitored for ten minutes.

Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* states:

7.3 Consequences of not attending the hearing

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 reapply.

As neither the Landlord nor the Tenant attended the hearing by 9:40 am, and in the absence the Landlord and Tenant completing submission of all their evidence and testimony, I order the Application to be dismissed with leave to reapply. I make no findings on the merits of the matter. The issuance of this decision does not extend any applicable deadlines under the Act.

Conclusion

The 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: July 10, 2023

Residential Tenancy Branch