



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC

This hearing dealt with an Application for Dispute Resolution by the Tenant requesting to cancel a One Month Notice to End Tenancy for Cause.

The Tenant provided affirmed testimony that she did not serve the Landlord with the Application, Notice of Hearing, or evidence because she was too busy getting ready to go for surgery on March 12, 2012 so she was not able to get it sent by registered mail. The Tenant stated that she did not know she had options other than registered mail by which she could serve the Landlord. The Tenant filed her application with our office on March 05, 2012 and we provided her with the Notice of Hearing package on March 06, 2012 to serve on the Landlord. The Tenant also provided a written request to our office that the hearing be postponed as she is still recovering from her surgery and is not ready to deal with the issues in her application at this time.

The Landlord provided affirmed testimony at the hearing that they had contacted our office about filing an application for an order of possession and were informed that there was a hearing scheduled for March 23, 2012 of an application made by the Tenant. The Landlord stated they obtained the hearing teleconference phone number and codes from our office. The Landlord stated that the Tenant did not serve them with the application, Notice of Hearing or any evidence. The Landlord stated that the Tenant could have served them with the documents personally, as allowed by the Act, because the rental unit is only a few doors down from the Landlord's suite.

Section 89(3) of the Residential Tenancy Act, the "Act", requires that the applicant serve the respondent with the Application, which includes the Notice of Hearing, within three days. Section 89 of the Act, provides specific rules for the service of the Application for dispute resolution package. Section 89 states:

### **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*].

For the parties' reference, the Residential Tenancy Branch Rules of Procedures state the following with regards to evidence:

### **3.1 Documents that must be served**

Together with a copy of the Application for Dispute Resolution, the applicant must serve each respondent with copies of all of the following:

- a) the notice of dispute resolution proceeding letter provided to the applicant by the Residential Tenancy Branch;
- b) the dispute resolution proceeding information package provided by the Residential Tenancy Branch;
- c) the details of any monetary claim being made, and
- d) any other evidence accepted by the Residential Tenancy Branch with the application or that is available to be served.

### **3.4 Evidence to be filed with the Application for Dispute Resolution**

To the extent possible, the applicant must file copies of all available documents, photographs, video or audio tape evidence at the same time as the application is filed.

### **3.5 Evidence not filed with the Application for Dispute Resolution**

- a) Copies of any documents, photographs, video or audio tape evidence that are not available to be filed with the application, but which the applicant intends to rely upon as evidence at the dispute resolution proceeding, must be received by the Residential Tenancy Branch and must be served on the respondent as soon as possible, and at least (5) days before the dispute resolution proceeding as those days are defined the "Definitions" part of the Rules of Procedure.
- b) If the time between the filing of the application and the date of the dispute resolution proceeding does not allow the five (5) day requirement of a) to be met, then the evidence must be received by the Residential Tenancy Branch and served on the respondent at least two (2) days before the dispute resolution proceeding.
- c) If copies of the applicant's evidence are not received by the Residential Tenancy Branch or served on the respondent as required, the Dispute Resolution Officer must apply Rule 11.6 [Consideration of evidence not provided to the other party or the Residential Tenancy Branch in advance of the dispute resolution proceeding].

#### **4.1 Serving the respondent's evidence**

- a) If the respondent intends to dispute an Application for Dispute Resolution, copies of all available documents, photographs, video or audio tape evidence the respondent intends to rely upon as evidence at the dispute resolution proceeding must be received by the Residential Tenancy Branch and served on the applicant as soon as possible and at least five (5) days before the dispute resolution proceeding as those days are defined in the "Definitions" part of the Rules of Procedure.
- b) If the date of the dispute resolution proceeding does not allow the five (5) day requirement in a) to be met, then all of the respondent's evidence must be received by the Residential Tenancy Branch and served on the applicant at least two (2) days before the dispute resolution proceeding.
- c) If copies of the respondent's evidence are not received by the Residential Tenancy Branch or served on the applicant as required, the Dispute Resolution Office must apply Rule 11.6 to evidence the respondent presents at the dispute resolution proceeding [Consideration of evidence not provided to the other party or the Residential Tenancy Branch in advance of the dispute resolution proceeding].

I find that the Tenant failed to serve the Application, Hearing Notice package and evidence on the Landlord, as required by section 89 of the Act. I am dismissing the Tenant's request for a postponement of today's hearing as she failed to serve the Landlord as required by the Act and she provided insufficient evidence to be granted a postponement of today's hearing. The Tenant's Application is dismissed with leave to reapply. This is not an extension of any statutory deadline.

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 23, 2012.

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Residential Tenancy Branch