



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MNR FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for an Order of Possession for Unpaid Rent pursuant to section 55; a monetary order for unpaid rent pursuant to section 67; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 11:16am in order to enable the tenant to connect with this teleconference hearing scheduled for 11:00am. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions.

### Preliminary Issue: Service of Application for Dispute Resolution and Notice of Hearing

The landlord testified that she made many attempts to serve the tenant with the landlord's Application for Dispute Resolution ("ADR"). She testified that, after phoning, texting and knocking on the door to serve the landlord's ADR, the landlord posted the ADR on the tenant's rental unit door on approximately June 10, 2016.

With respect to method of service, Residential Tenancy Policy Guideline No. 12 provides that any Application for Dispute Resolution for an Order of Possession must be served either by personal service; registered mail; posting in a conspicuous place; or based on a Residential Tenancy Branch Order for service. In this case, I find that the landlord served in accordance with the allowable methods of service under the Act.

### Preliminary Issue: Provision of Evidence

The Residential Tenancy Dispute Resolution Rules of Procedure Rule No. 2.5 refers to the essential documents to be submitted with an Application for Dispute Resolution;

## 2.5 Documents that must be submitted with an Application for Dispute Resolution

To the extent possible, at the same time as the application is submitted to the Residential Tenancy Branch directly or through a Service BC office, the applicant must submit:

- a detailed calculation of any monetary claim being made;
- a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and
- copies of all other documentary and digital evidence to be relied on at the hearing...

The landlord testified that she served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") on May 23, 2016 by posting it on the tenant's rental unit door. She testified that the tenant acknowledged receipt of the 10 Day Notice to her in person. The landlord did not submit any evidence, beyond her own testimony to show proof of service of the 10 Day Notice. The landlord did not submit as evidence a copy of the 10 Day Notice upon which she relies.

The Residential Tenancy Dispute Resolution Rules of Procedure Rule No. 3.17 refers to the essential documents to be submitted with an Application for Dispute Resolution;

### 3.17 Consideration of new and relevant evidence

Evidence not provided to the other party and the Residential Tenancy Branch directly or through a Service BC office in accordance with the Act or Rules 3.1, 3.2, 3.10, 3.14 and 3.15 may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence.

**The arbitrator has the discretion to determine whether to accept documentary or digital evidence** that does not meet the criteria established above **provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.**

...

[emphasis added]

When a landlord applies for an Order of Possession on the basis of a Notice to End Tenancy, the Notice itself **must** be submitted as evidence for assessment and consideration by the arbitrator.

The landlord did not submit a copy of the 10 Day Notice to End Tenancy in this matter. The landlord was not able to provide sufficient evidence or submissions to show that she submitted a copy of the 10 Day Notice for this hearing. Therefore, I am unable to fully evaluate her application for an Order of Possession and monetary Order. Based on the lack of required evidence, I must dismiss the landlord's Application for Dispute Resolution.

Conclusion

I dismiss the landlord's application in its entirety 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 12, 2016

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Residential Tenancy Branch