



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding VERNON NATIVE HOUSING SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

Tenant's Application dated November 8, 2016: CNR, MNDC  
Landlord's Application dated November 14, 2016  
and Landlord's Amendment to an Application  
for Dispute Resolution dated November 17, 2016: OPR, MNR

### **Introduction and Background**

This hearing was scheduled to consider cross-applications pursuant to the *Residential Tenancy Act* (the "Act"). The tenants are seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") issued November 4, 2016; and a monetary order for money owed or compensation for damage or loss (collectively the "Tenants' Application").

The landlord is seeking an order of possession for unpaid rent which is the only claim set out in the landlord's initial Application. The landlord then filed an Amendment to an Application for Dispute Resolution seeking a monetary award for unpaid rent (the "Amended Application").

The landlord appeared at the teleconference hearing. The tenant did not appear but had the opportunity to do so for the length of the hearing which lasted 31 minutes. The landlord gave affirmed testimony. During the hearing the landlord was given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

At the start of the hearing, the landlord withdrew her claim for an order for possession as the tenant moved out of the rental unit on November 30, 2016. Accordingly, I need only address the landlord's claim for a monetary order for unpaid rent set out in her Amended Application.

As the tenant did not attend the hearing, service of the landlord's Notice of a Dispute Resolution Hearing (the "Notice of Hearing") and Amended Application were considered. The landlord testified that she served the Amended Application on November 18, 2016 by posting a copy on the tenant's door of the rental unit.

### Analysis – Service of Landlord's Amended Application

Rule 3.1 of the *Residential Tenancy Branch Rules of Procedure* establishes the following service requirements:

*3.1 The applicant must, within 3 days of the hearing package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:*

- (a) the Application for Dispute Resolution;*
- (b) the notice of dispute resolution proceeding letter provided to the applicant by the Residential Tenancy Branch;*
- (c) the dispute resolution proceeding information package provided by the Residential Tenancy Branch; and*
- (d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC office with the Application for Dispute Resolution, in accordance with Rule 2.5.*

Section 89(1) of the *Residential Tenancy Act* requires the application for dispute resolution to be served by 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 document]...*

Rule 3.5 of the *Residential Tenancy Branch Rules of Procedure* establishes that the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the hearing package and all evidence as required by the *Act* and these *Rules of Procedure*.

As the Amended Application was posted on the tenant's door of the rental unit, the landlord has not provided sufficient evidence to satisfy me that the tenant was served in accordance with the *Act* and the *Rules of Procedure*. Accordingly, I am not satisfied that the tenant was properly served with the landlord's Amended Application.

#### Tenant's Application

In the absence of any evidence or submissions from the tenant/ applicant, the tenant's application to cancel the 10 Day Notice issued November 4, 2016 and a monetary order for money owed or compensation for damage or loss is dismissed without liberty to reapply.

#### Conclusion

The tenant's application is dismissed without liberty to reapply.

The landlord's application is dismissed with leave to reapply due to a service issue. This decision does not extend any applicable time limits under the *Act*.

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: December 20, 2016

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Residential Tenancy Branch