



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Solterra Haro Street LP  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant's advocate and two agents for the landlord.

This hearing was scheduled as a result of a Review Consideration Decision, dated December 20, 2016, on the original decision on these matters. In the Review Consideration Decision the arbitrator wrote:

"I order that the Decision and Order dated December 1, 2016 is suspended until the Review Hearing has been completed.

Notices of the time and date of the hearing are included with this Review Consideration Decision for the Tenant to serve to the Landlord within 3 days of receipt of this Decision.

The Tenant must serve a copy of this Review Consideration Decision and a copy of the evidence provided for this review to the Landlord. Each Party must serve the other and the Residential Tenancy Branch with any additional evidence that they intend to reply upon at the Review Hearing. Fact sheets that explain evidence and service requirements are available at <http://www.rto.gov.bc.ca/content/publications/factSheets.aspx>

Failure to attend the Review Hearing at the scheduled time, with all relevant documents and/or witnesses, will result in a decision being made on the basis of any information before the Arbitrator and the testimony of the Party in attendance at the Review Hearing."

I note that the hearing was scheduled to begin at 9:30. At that time the only participants who called into the hearing were the two agents for the landlord. I advised them both that if the tenant did not call into the hearing within 10 minutes of the start of the hearing

I would close the hearing and render a decision, as is the practice of all Residential Tenancy Branch hearings.

At 9:40 the tenant's advocate called into the hearing. He indicated that the tenant was late in arriving and that in fact he still had not arrived but was on his way. The hearing continued for another 10 minutes during which the issue of service on the hearing documents was discussed but the tenant never did arrive to be with the advocate.

At the outset of the hearing the landlords testified that they did not receive any hearing documents from the tenant in relation to this hearing. The landlord submitted that they found out about the new hearing when they contacted the Residential Tenancy Branch to see if they could enforce the orders originally issued on December 1, 2016. The landlord also acknowledges received of the Review Consideration Decision.

The tenant's advocate stated that the tenant had served the landlord's agent with the hearing documents on January 3, 2017 in person and that this service was witnessed by a third party. The advocate confirmed that he did not have any first hand or direct knowledge of the service or the contents of the served documents. The landlord submitted that the documents received by the agent on that date were related to another hearing that was held on January 9, 2017.

When one party to a dispute provides testimony regarding circumstances related to service of documents and the other party provides an equally plausible account of those circumstances, the party making the claim has the burden of providing additional evidence to support their position.

Section 89 of the *Residential Tenancy Act (Act)* states an Application for Dispute Resolution 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 that 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; or
- e) As ordered by the director.

The burden rests with the party who is obligated to serve documents to the other to provide sufficient evidence to establish that they have met the requirements of service, either under the *Act* or as directed by an arbitrator. In this case the burden rests with the tenant. Residential Tenancy Policy Guideline 12 states, in part, that where proof of service is required, the person who actually served the documents must either:

- be available as a witness in the hearing to prove service, or
- provide a signed statement with the details of how the documents were served.

As both agents for the landlord have testified that the tenant has not served them with documents related to this hearing and as directed in the Review Consideration Decision it is incumbent on the tenant to provide additional evidence to support his position.

However, the tenant, who according to his advocate is the person who served the documents, or any witness of that service, did not attend the hearing to provide testimony regarding service as is required by Policy Guideline 12. As a result, I find the tenant has failed to provide sufficient evidence to establish he served the landlord with the hearing documents and additional evidence as per the Review Consideration Decision of December 20, 2016.

#### Issue(s) to be Decided

The issues to be decided are whether the Decision and Orders issued on December 1, 2016 should be confirmed, set aside, or varied, pursuant to Sections 82 of the *Act*

#### Conclusion

Based on the above, I dismiss the tenant's Application in its entirety and without leave to reapply. As a result, I also confirm the original Decision and Orders issued on December 1, 2016 are of full force and effect.

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: January 20, 2017

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Residential Tenancy Branch