



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord under the *Residential Tenancy Act* (the “Act”), for a Monetary Order for unpaid rent and the recovery of the filing fee, the retention of the Tenant’s security deposit to offset any money owed by the Tenant to the landlord, and for an Order of Possession for unpaid rent.

The hearing was convened by telephone conference call and was attended by the Landlord and the Tenant, both of whom provided affirmed testimony.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondent must be served with a copy of the Application and Notice of Hearing. The Rules of Procedure also provide guidelines for how and when the Applicant and Respondent must exchange evidence with the Residential tenancy Branch (the “Branch”), and one another.

In the hearing there was significant confusion regarding the service of documents and evidence. The Landlord testified that they sent the Tenant a copy of the Application and the Notice of Hearing by registered mail on August 8, 2017; however, the Tenant testified that they do not have access to the mailbox as the Landlord never provided them with a key. The Tenant testified that although they eventually received the Application and Notice of Hearing, they did not receive the delivery notice from Canada Post until August 24, 2017.

In the hearing the Landlord confirmed that the Tenant does not have access to the mailbox as they never gave him a key. The Landlord also testified that they deliver the Tenants mail regularly by wedging it between the door frame and the door. When I inquired with the Landlord as to why they had not provided the Tenant with a key for the mailbox, the Landlord testified that they were only provided one by Canada Post. I asked the Landlord if it was possible to obtain a second key, and the Landlord testified that it was, however, they had not obtained one.

Section 59 of the Act states the following with regards to the service of the Application on the Respondent:

### **Starting proceedings**

- 59** (3) Except for an application referred to in subsection (6), a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.

The Rules of Procedure also state the following with regards to the service of documents and evidence:

### **3.1 Documents that must be served with the hearing package**

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 [Documents that must be submitted with an Application for Dispute Resolution].

Although the Landlord testified that they sent the Application and the Notice of Hearing by registered mail on August 8, 2017, the Tenant testified that they did not receive it until August 24, 2017. Based on the testimony of both parties that the Tenant does not have a key to access the mail, I am not satisfied that the Tenant received or was served with the Application or the Notice of Hearing in accordance with the aforementioned section of the *Act* or Rules of Procedure.

I also find that the Landlord significantly interfered with the Tenant's ability to obtain their mail by not providing the Tenant with a means to access the mailbox. I find that this is of particular significance in this case, as the Landlord testified that they served the Tenant the Notice of Hearing, the application, and their evidence package by mail. Although the Tenant acknowledges eventually receiving the Application and the Notice of hearing, they testified that it was not received in a timely manner, which impacted their ability to fully prepare for the hearing.

Further to this, in the hearing I advised both parties that most of the evidence before me had been received late. The parties acknowledged that they did not exchange their evidence in accordance with the aforementioned Rules of Procedure, and both parties testified that they did not have all or a portion of the evidence before me.

The Rules of Procedure state the following with regards to the service of documents and evidence:

### **3.14 Evidence not submitted at the time of Application for Dispute Resolution**

Documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC office not less than 14 days before the hearing. In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17.

### **3.15 Respondent's evidence provided in single package**

Where possible, copies of all of the respondent's available evidence must be submitted to the Residential Tenancy Branch directly or through a Service BC office and served on the other party in a single complete package. The respondent must ensure documents and digital evidence that are intended to be relied on at the hearing are served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. In all events, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than 7 days before the hearing. In the event that evidence is not available when the respondent submits and serves their evidence, the arbitrator will apply Rule 3.17.

I find that the opportunity to know the case against you is a fundamental tenant of the dispute resolution process. As the parties did not exchange their evidence in accordance with the aforementioned Rules of Procedure, and both parties have testified that they do not have all or a portion of the evidence before me, I find that neither party had a fair opportunity to know the case against them.

As a result of the above findings, the Application is dismissed with leave to reapply.

### **Conclusion**

The Landlord's Application is dismissed with leave to re-apply. 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: September 25, 2017

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**Residential Tenancy Branch**