



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **INTERIM DECISION**

**Dispute Codes** MNDC FF

### **Introduction**

This interim decision is to address the preliminary matter before me as set out below. A hearing was held on July 13, 2017, and adjourned due to lack of time. The hearing has been adjourned to October 23, 2017 at 9:30am, and I had requested clarification from the respondent's legal counsel as to the preliminary issue below.

### **Preliminary Issue – Request for Summons**

Legal counsel, MD, responded to my request in my interim decision, dated July 31, 2017, providing further clarification as to the summons that legal counsel had requested.

Legal counsel had originally requested a summons to produce the last known address of a material witness, KW. MD responded that the respondent was able to obtain KW's address through a private investigator, and no longer required a summons for her former employer to produce that address.

Section 5.3 of the RTB Rules of Procedure states the following:

#### ***5.3 Application for a summons***

*On the written request of a party or on an arbitrator's own initiative, the arbitrator may issue a summons requiring a person to attend a dispute resolution proceeding or produce evidence. A summons is only issued in cases where the evidence is necessary, appropriate and relevant. A summons will not be issued if a witness agrees to attend or agrees to provide the requested evidence.*

*A request to issue a summons must be submitted, in writing, to the Residential Tenancy Branch directly or through a Service BC Office, and must:*

- state the name and address of the witness;*
- provide the reason the witness is required to attend and give evidence;*
- describe efforts made to have the witness attend the hearing;*
- describe the documents or other things, if any, which are required for the hearing; and*
- provide the reason why such documents or other things are relevant.*

Legal counsel confirmed that the KW is a witness who would be providing testimony that is necessary, appropriate, and relevant to the matter before me, and that her former employer is in possession of documents that are also material to this proceeding. Counsel expressed concern that KW may not attend the hearing on her own accord as she is no longer employed as a social worker for this employer, but in November 2015 was part of an investigation that involved the parties in this matter. Legal counsel also confirmed that her former employer was also in possession of documents that relate to this matter.

*Section 76 of the Residential Tenancy Act states:*

- (1) *On the request of a party or on the arbitrator's own initiative, an arbitrator may issue a summons requiring a person*
  - (a) *to attend an arbitration hearing or proceeding and give evidence, or*
  - (b) *to produce before the arbitrator documents or any other thing relating to the subject matter of the arbitration.*
- (2) *A party who requests that a summons be issued under subsection (1) must provide conduct money for the witness in accordance with the rules of procedure established under section 9(3) [director's responsibilities].*
- (3) *If a person named in and served with a summons under subsection (1) does not comply with the summons, the person is liable, on application to the Supreme Court, to be committed for contempt as if in breach of a judgment or an order of the Supreme Court.*

I find that the respondent's legal counsel, MD, has provided sufficient information to satisfy me the respondent has made efforts to compel the witness and her former employer to provide evidence for this hearing, and was unsuccessful in doing so.

In accordance with section 76 of the *Act*, a summons is issued for KW to attend the hearing on October 23, 2017 at 9:30am, by telephone. A summons is also issued for her former employer to produce any documents as they relate to this matter.

The two summons are enclosed with this interim decision for the respondent's legal counsel to serve before the reconvened hearing on October 23, 2017.

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: October 16, 2017

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Residential Tenancy Branch