



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, ERP, OLC, FF

### Introduction

This is an application brought by the tenant(s) requesting an order canceling a Notice to End Tenancy that was given for cause, requesting an order for the landlord to comply with the Residential Tenancy Act, requesting emergency repairs, and requesting recovery of the filing fee

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also took sworn testimony from the parties with regards to the service of various documents.

All parties were affirmed

### Issue(s) to be Decided

The first issue I dealt with was whether or not the tenants had complied with the service requirements for the notice of hearing and hearing documents.

### Background and Evidence

The applicants testified that they applied for dispute resolution on November 3, 2017 and were provided with the hearing documents and notice of hearing on November 7, 2017.

The applicants testified that they served the landlord with the notice of hearing and hearing documents on November 29, 2017, claiming that when they picked up the documents they were informed that they did not need to be served until 14 days before the hearing.

### Analysis

Section 59 of the Residential Tenancy Act states:

**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.

Further, section 3.1 of the residential tenancy rules of procedure states:

### **3.1 Documents that must be served with the Notice of Dispute Resolution Proceeding Package**

The applicant must, **within three days** of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- b) the Respondent Instructions for Dispute Resolution;
- c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) 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*].

In this case the tenants, having received the documents to serve on November 7, 2017, were required to serve those documents by November 10, 2017, however, as stated above, the documents were not served until November 29, 2017, a full 19 days past the date at which they were to be served.

The tenants claim that they were told they did not have to serve the documents until 14 days before the hearing, however I find it very unlikely that anyone, at the Government office, would have given that information to the tenants.

It is my decision therefore that I am unwilling to proceed with this hearing as the tenants have failed to comply with both the Residential Tenancy Act and the rules of procedure.

It is also my decision that, since the time frame in which to apply to dispute the Notice to End Tenancy is well past, the request to cancel that notice is dismissed and having determined that the notice complies with section 52 of the Residential Tenancy Act, I have issued an Order of Possession to the landlord.

The remainder of the tenant's claims will be dismissed with leave to reapply.

### Conclusion

The request to cancel the one-month Notice to End Tenancy is hereby dismissed without leave to reapply, and pursuant to section 55 of the Residential Tenancy Act, I have issued an Order of Possession to the landlord for 1:00 p.m. on January 31, 2018.

I further order that the tenants bear the \$100.00 cost of the filing fee.

The remainder of the tenant's claims are dismissed 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: January 22, 2018

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Residential Tenancy Branch