



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CMHA KOOTENAYS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes ET, FFL

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an early end to this tenancy and an Order of Possession pursuant to section 56; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:11 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord's representative (the landlord) testified that they sent the tenant a copy of the dispute resolution hearing package by registered mail to the tenant's rental unit on January 9, 2018. The landlord provided the Canada Post Tracking Number to confirm this registered mailing. The landlord testified that Canada Post's Online Tracking system confirmed that the package was returned to the landlord on February 5, 2018, the day of this hearing, as unclaimed by the tenant.

During the hearing, I confirmed that Canada Post's Online Tracking system verified that the landlord's dispute resolution hearing package was sent to the tenant by ExpressPost requiring a signature from the tenant when delivered as declared by the landlord. This Canada Post service qualifies as registered mail, in accordance with the definition of that service for residential tenancy disputes.

As outlined below, paragraph 89(2)(b) of the Act requires that service by registered mail to a tenant be sent to the tenant at the address where the tenant resides:

**89** (2) *An application by a landlord under... section 56 [application for order ending tenancy early]...must be given to the tenant in one of the following ways:*

*(a) by leaving a copy with the tenant;*

*(b) by sending a copy by registered mail to the address at which the tenant resides;*

*(c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;*

*(d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;*

*(e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents]...*

In this case, the landlord testified that the tenant has not been residing at the rental unit since a December 29, 2017 flood to the rental unit. Although the tenant has taken medications and clothes with them, the remainder of their belongings and furniture are in the rental unit. The landlord testified that the tenant's rent has continued to be paid and is current, accepted by the landlord for use and occupancy only. While the landlord sent emails to the tenant's sibling to advise of the landlord's application and the importance of attending this hearing, the landlord has had no direct contact with the tenant, nor does the landlord know the address where the tenant is temporarily residing.

Under these circumstances, I find that the landlord has not demonstrated to the extent required that the dispute resolution hearing package sent to the tenant at the rental unit address is the location where the tenant is residing, the requirement of paragraph 89(2)(b) of the *Act*. As such, I dismiss the landlord's application with leave to reapply as I do not find that the application has been served in accordance with section 89(2) of the *Act*.

### Conclusion

The landlord's application is 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: February 05, 2018

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Residential Tenancy Branch