



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **INTERIM DECISION**

**Dispute Codes**      CNR CNL PSF MNDCT OLC FFT

### **Introduction**

A hearing is scheduled for September 16, 2019 at 11:00 A.M. to deal with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

- cancellation of the landlord's 10 Day Notices to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;  
cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"), pursuant to section 49;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.
- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

On September 3, 2019, the tenant filed a request for 3 items as set out below.

### **Tenant's Application for a Summons for a Witness to Attend the Hearing**

The tenant requested a summons of a witness, JM, to attend the hearing.

The tenant submitted a written request prior to the hearing requesting the above summons as JM resides on the property and the tenant states that JM "is/was the roommate of the landlord". The tenant stated in the request that:

"the landlord has made several claims (in writing) that implicate JM as a key witness to events taking place. JM is also believed to have vital information about the mail box and mail being delivered to the house (or in this case not delivered), the landlord's current

living situation as well as the unresolved...issues that have been the primary catalyst leading to this Two Month Notice to End Tenancy being issued (in bad faith)."

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.*

I have reviewed the tenant's application for a summons of a witness to attend the hearing, and although the tenant did fulfill some of the criteria above such as the provision of the witness's name and address, and the reason for why the testimony of the witness is material to the proceedings, I am not satisfied that the tenant had provided sufficient evidence to support what efforts the tenant made to have the witness attend the hearing. As stated above, a summons will not be issued if a witness agrees to attend the hearing, or agrees to provide the requested evidence. For this reason I dismiss the tenant's application for the attendance of this witness for the scheduled hearing.

**Tenant's Application for a Summons Requiring the Respondent to Produce Evidence**

The tenant believes that the landlord has overcharged her for utilities after an agreement was made by both parties to pay a proportion of the utilities, namely 1/3 of the electricity bill. The tenant states that she had made over 15 written requests for official copies of these bills within an 8 month period, but the landlord has failed to produce these documents. The tenant states that this has been a catalyst for the

landlord's repeated attempts to end this tenancy by way of 2 Month Notices in order to avoid addressing this issue.

The tenant requests that a summons be issued compelling either the landlord or the utility provider to produce all the official electricity bills for this account dating back to August 1, 2016 through to November 28, 2018.

The tenant submits that the production of these documents will show whether the landlord has indeed been acting in good faith, or has been defrauding the tenant.

I have reviewed the tenant's application for a summons for the production of evidence for this application. The tenant states that she had made several requests for the landlord to produce these documents, but these written requests were not included in this summons request. As stated in Rule 5.3 as set out above, a summons will not be issued if the witness agrees to provide the requested evidence.

As I am not satisfied that the tenant had provided sufficient evidence to support that she had made these requests of the landlord, and that the landlord had failed to produce these documents after these requests were made, I dismiss the tenant's summons request for the production of the requested documents.

**Tenant's Application for Permission to Have Hearing Recorded and Transcribed by Official Court Reporter**

The tenant requests that an official transcript by an accredited Court Reporter be made for the scheduled hearing.

The tenant explained the reasons for her request. The tenant states that the landlord has a history of only providing oral evidence, as well as providing false or misleading statements in order to obtain the desired results. The tenant referenced a previous hearing where a settlement agreement was made between both parties.

The tenant also believes that if the landlord was unsuccessful in obtaining an Order of Possession after this hearing, the landlord will continue to serve the tenant with further notices in an effort to bully and harass her.

Another reason the tenant is requesting this transcript is because the current landlord refuses to provide the tenant a reference letter, and the transcript is necessary for the tenant to demonstrate to prospective landlords that she is a model tenant.

Section 6.12 of the RTB Rules of Procedure states the following:

**6.12 Official transcript**

A party requesting an official transcript by an accredited Court Reporter must make a written request stating the reasons for the request to the other party and to the Residential Tenancy Branch directly or through a Service BC Office not less than seven days before the hearing.

An arbitrator will determine whether to grant the request and will provide written reasons to all parties and issue any necessary orders.

If permission is granted, the party making the request must:

- a) prior to the hearing, provide the Residential Tenancy Branch with proof of the Court Reporter's accreditation;
- b) make all necessary arrangements for attendance by the accredited Court Reporter and their necessary equipment;
- c) pay the cost of the accredited Court Reporter's attendance at the dispute resolution hearing;
- d) pay the cost of the Court Reporter's services and the cost of transcripts; and
- e) provide all parties and the Residential Tenancy Branch with official copies of the transcript.

**6.13 Restricted use of recordings**

Transcripts may not be used for any purpose other than the proceeding, a review or any court proceeding.

I have reviewed the previous decision referenced by the tenant, and despite the tenant's concerns that the landlord had provided false or misleading information in order to obtain the desired results, I find that the information submitted in the tenant's application fails to disclose sufficient evidence that the landlord had committed these actions. The previous decision referenced by the tenant, dated May 7, 2019, references a dispute that was settled by way of a mutual resolution between the parties. Neither party had filed an application for a review consideration on the basis of fraud, nor was one granted by an Arbitrator on the grounds of fraud.

Additionally, the landlord has the right to give oral evidence under oath or affirmation. The landlord is not required to produce written evidence for a hearing unless ordered by an Arbitrator under Rule 5.3 of the RTB Rules of Procedure.

The tenant is also making this request in case the landlord is unsuccessful in obtaining an Order of Possession and makes a future attempt at ending this tenancy by providing

false or misleading information. Both parties will be provided with a written decision after the scheduled hearing on September 16, 2019, after a hearing is held, and after the Arbitrator considers the evidence provided by both parties. I am not satisfied that the tenant has provided sufficient evidence to support her claims that the landlord has provided, or will provide, false or misleading information.

Lastly, the tenant is making this request in order to have a written record that she is a model tenant who abides by the *Act* and tenancy agreement. As stated earlier, both parties will be provided with a written decision after the hearing is held on September 16, 2019. As stated above, Rule 6.13 states that “transcripts may not be used for any purpose other than the proceeding, a review or any court proceeding.”

For all these reasons, I dismiss the tenant’s application for permission for the proceedings to be recorded and transcribed by an accredited Court Reporter.

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 9, 2019

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Residential Tenancy Branch