



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL, FFT

### Introduction and Analysis

This hearing dealt with the tenant's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act") to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"), and to recover the cost of the filing fee.

The tenant attended the teleconference hearing. The landlord did not attend the hearing. As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated August 14, 2019 ("Notice of Hearing"), application and documentary evidence were considered. The tenant was affirmed and testified that he was unsure of the date or time of day that the landlord was served with the Notice of Hearing, application and documentary evidence. The tenant stated that it was around August 8, 2019. The tenant confirmed that service was not witnessed.

Both parties have the right to a fair hearing. The landlord would not be aware of the hearing without having received the Notice of a Dispute Resolution Proceeding and application. I find the tenant's testimony is not reliable as they stated they served the landlord around August 8, 2019, yet the Notice of Hearing was not issued until August 14, 2019. Residential Tenancy Branch Rules of Procedure Rule 3.5 states that at the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the *Act* and the Rules of Procedure. I am not satisfied with the tenant's information provided regarding service.

Based on the above, **I dismiss** the tenant's application **with leave to reapply** as I am not satisfied that the landlord has been sufficiently served with the Notice of Hearing

and application in a manner provided for under the *Act*. I note this decision does not extend any applicable time limits under the *Act*.

I also note that a copy of the 2 Month Notice was not submitted in evidence. Furthermore, the tenant testified that they entered into a new tenancy agreement with the landlord since filing this application. As a result, I do not grant the landlord an order of possession under section 55 of the *Act*, for two reasons. Firstly, I do not have a 2 Month Notice before me to determine if it meets the requirements of se

Section 52 of the *Act*. Secondly, the tenant has affirmed that there is a new tenancy agreement between the parties.

In terms of the 2 Month Notice, I cannot think of a more important document to submit in evidence, which in this matter, was not submitted by either party.

I do not grant the filing fee as a result of the service issue.

### Conclusion

The tenant's application is dismissed with leave to reapply due to a service issue. This decision does not extend any applicable time limits under the *Act*.

The filing fee is not granted as noted above. An order of possession is not granted as noted above.

This decision will be emailed to the tenant and sent by regular mail to the landlord, as the tenant did not have an email address for the landlord.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 8, 2019

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Residential Tenancy Branch