



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, RP

### Introduction

This hearing was convened as the result of the tenant's application for dispute resolution under the Residential Tenancy Act (Act). The tenant applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued by the landlord.

The tenant filed an amended application on January 9, 2020, adding a request for an order requiring the landlord to make regular repairs to the rental unit.

The tenant and the landlord attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, the landlord submitted that he did receive the tenant's evidence in parts and close to the hearing date.

The landlord confirmed not providing any evidence as he did not have time to prepare a response, considering the short time from receiving the evidence and the hearing.

The parties' respective witnesses were excused from the hearing until it was their turn to testify. I informed the parties to inform me later in the hearing if they required their witnesses to participate. Neither party did so.

The hearing process was explained to the parties prior to the hearing.

I have reviewed all evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

*Preliminary Issue -*

I have determined, and the tenant was informed, that her amended application dealing with a request for an order requiring the landlord to make repairs to the rental unit is unrelated to the primary issue of disputing or enforcing the Notice.

As a result, pursuant to section 2.3 of the Rules, I have severed the tenant's Application and the hearing proceeded on the tenant's request to cancel the Notice. A determination of the remaining portion of the tenant's application will be made at the conclusion of this Decision.

Issue(s) to be Decided

Has the tenant complied with her obligation under the Act and Rules in serving the landlord/respondent with her application and dispute resolution documents?

If so, is the tenant entitled to an order cancelling the landlord's Notice?

Background and Evidence

As the point was raised by the landlord when evidence was discussed, the tenant was questioned about the timing of her service of her application to the landlord.

In response, the tenant ultimately confirmed her application was filed on December 13, 2019, at Service BC, and RTB notes to file show that the Notice of Dispute Resolution was made available to the tenant on December 18, 2019.

The RTB notes to file show that the tenant called into the RTB on December 27, 2019, indicating that she was late in serving the landlord the Notice of Hearing documents due to a family emergency. The tenant was informed that it would be up to the arbitrator at the hearing to authorize late service.

The tenant was also informed of the "deadline" to submit all evidence 14 days prior to the hearing.

In response to my inquiry, the tenant said that the family emergency was her son being admitted to hospital on December 21. The tenant said he was released on the 6<sup>th</sup> day thereafter. She then said it was seven days later he was released, or December 28<sup>th</sup>.

The tenant confirmed that she served the landlord with her application on January 9, 2020.

Rule 3.1 states that the applicant, the tenant in this case, must, within three (3) days of the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch (RTB), serve the respondent, the landlord in this case, copies of certain documents.

The documents which must be served are:

- 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].

The tenant did not submit documentation to support her son was admitted to hospital or the dates of admittance or release.

### Analysis

The objective of the RTB Rules of Procedure is to ensure a fair, efficient and consistent process for resolving disputes for landlords and tenants.

Section 64(3) of the Act states that subject to the rules of procedure established by section 9(3) of the Act, the director may deal with any procedural issues that may arise in a dispute resolution proceeding.

In this case, I find that the tenant was informed and the RTB made available the required dispute resolution documents on December 18, 2019, and the tenant was required to serve the landlord those documents by December 21, 2019.

Instead, the tenant served the landlord those documents on January 9, 2020.

Even if the tenant's son was in the hospital, by her own testimony he was released on either December 27<sup>th</sup> or December 28<sup>th</sup>. She then waited another 12 or 13 days to serve the landlord. In total, the tenant waited for 23 days to serve the required dispute resolution hearing documents as outlined in Rule 3.1.

Due to the above, I find the tenant has wilfully failed to comply with her obligation to serve the dispute resolution hearing documents within the required timeframe.

Both parties have a right to a fair hearing.

I find that proceeding with the hearing in light of the tenant's wilful failure is unfair and prejudicial to the landlord.

I therefore dismiss the tenant's application, without leave to reapply.

Given the above and after reviewing a copy of the Notice, which had an effective vacancy date of December 19, 2019, and which I find complies with section 52 of the Act, pursuant to section 55(1) of the Act, I must grant an order of possession of the rental unit to the landlord.

I therefore grant the landlord an order of possession of the rental unit effective and enforceable two (2) days after service on the tenant.

Should the tenant fail to vacate the rental unit pursuant to the terms of the order after being served, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenant is advised that costs of such enforcement, such as bailiff fees, are recoverable from the tenant.

I likewise dismiss the portion of the tenant's application for an order requiring the landlord to make regular repairs to the rental unit, as the tenancy is ending.

Conclusion

The tenant's application is dismissed, without leave to reapply.

The landlord is granted an order of possession of the rental unit.

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 24, 2020

---

Residential Tenancy Branch