



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      PSF, OLC

### Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant under the *Manufactured Home Park Tenancy Act* (the “Act”), seeking:

- An order for the Landlord to comply with the *Act*, regulation, or tenancy agreement; and
- An order for the Landlord to provide services or facilities required by the tenancy agreement or law.

The hearing was convened by telephone conference call and was attended by the Tenant, the Tenant’s Advocate (the “Advocate”), the Tenant’s support person, the Landlord, and Legal Counsel for the Landlord (the “Legal Counsel”), all of whom provided affirmed testimony.

Section 52 (3) of the *Act* states that 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 the application, or within a different period specified by the director. Rule 3.1 of the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) states that the applicant must, within 3 days of the hearing package being made available by the Residential Tenancy Branch (the “Branch”), serve each respondent with copies of all of the following:

- a) the Application for Dispute Resolution;
  - b) the notice of dispute resolution proceeding letter provided to the applicant by the Branch;
  - c) the dispute resolution proceeding information package provided by the Branch;
- and

d) any other evidence submitted to the 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].

Rule 3.14 states that documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Branch not less than 14 days before the hearing and rule 3.5 states that 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.

In the hearing the Landlord and their Legal Counsel testified that they were never served any documents relating to the hearing by the Tenant, and only became aware of the hearing by way of an auto-generated email reminder sent by the Branch as the Tenant had entered the Landlord's email address when filing the Application. As a result, they requested that the Application be dismissed based on lack of service. The Advocate acknowledged in the hearing that neither the Notice of Dispute Resolution Proceeding Package, nor the documentary evidence before me from the Tenant, was served on the Landlord.

The opportunity to know the case against you and the opportunity to be heard are fundamental to the dispute resolution process. As the Landlord was not served with the Application, Notice of Hearing, or the evidence before me, I find that they did not have a fair opportunity to know the case against them or to properly prepare and provide evidence in their defense. Further to this, I find that proceeding with the hearing as scheduled and rendering a decision in relation to the substantive matters claimed in the Application would be a breach of the *Act*, the Rules of Procedure, and the principles of natural justice. As a result, the Application is therefore dismissed with leave to reapply.

Despite the foregoing, it came to my attention that the rental site may be located on Westbank First Nations Land. Although I have made no findings of fact or law in relation to jurisdiction as I have dismissed the Application based on lack of service, the parties should be aware that neither the *Residential Tenancy Act* nor the *Manufactured Home Park Tenancy Act* apply to Westbank lands as set out in Residential Tenancy Policy Guideline #27. Should either party wish to make a subsequent Application in relation to this tenancy, they may wish to seek independent legal advice regarding whether the Branch has jurisdiction over the tenancy or to hear and decide matters in relation to the tenancy.

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: August 11, 2020

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Residential Tenancy Branch