



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding beech westgard developments  
ltd. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ERP, FFT

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an expedited application regarding the above-noted tenancy. The tenant applied for:

- an order for emergency repairs, pursuant to section 33; and
- an authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant affirmed he attached two packages containing the complete application to the landlord's door. The tenant was not able to recall the date he served the application packages or the address where he served them.

The landlord stated he received only one package containing part of the notice of hearing on November 05, 2020 and no evidence. The notice of hearing did not have the page with the access code. The landlord received the package from a neighbour, as the package was attached to the neighbour's door. On November 09, 2020 the landlord called the Residential Tenancy Branch and was able to obtain a complete copy of the notice of hearing.

At a later point in the hearing the tenant affirmed both packages were served on October 29, 2020 at the address mentioned on the cover page of this decision.

The tenant is obligated to comply with the rules set out for the delivery of his application for an expedited hearing to the respondent. Rule of Procedure 10.3 states:

10.3 Serving the notice of dispute resolution proceeding package

**The applicant must, within one day of the Notice of Dispute Resolution Proceeding Package being made available** by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- **the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;**
- the Respondent Instructions for Dispute Resolution;
- an Order of the director respecting service;
- the Expedited Dispute Resolution Process Fact Sheet (RTB-114E) provided by the Residential Tenancy Branch; and
- evidence submitted to the Residential Tenancy Branch online or in person, or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 10.2 [Applicant's Evidence Relating to an Expedited Hearing].

(emphasis added)

Residential Tenancy Branch Policy Guideline 51 provides as follows:

Once served, **the applicant must complete an #RTB – 9 Proof of Service: Notice of Expedited Hearing - Dispute Resolution Proceeding form and submit it to the online intake system, the Residential Tenancy Branch, or a Service BC office at least two days before the hearing. Failure to serve the respondent as required or as ordered by the director, or to submit the #RTB – 9 Proof of Service form, may result in the application being dismissed** or the hearing being adjourned to a later date.

(emphasis added)

The tenant's testimony regarding the service date and location was conflicting and the tenant did not submit the form RTB 9 – proof of service. The landlord's testimony was cohesive, the landlord affirmed he received the complete application on November 09, 2020, just four days before the hearing.

Thus, I find the tenant failed to prove on a balance of probabilities that he served the complete application package within one day of it being made available on October 29, 2020, in accordance with Rule of Procedure 10.3.

As the landlord received the complete application package only four days before the hearing, I find it is not procedurally fair to proceed with this hearing as the landlord did not have enough time to prepare for this hearing.

Based on the foregoing, I dismiss the tenant's application with leave to reapply. Leave to reapply is not an extension of timeline to apply for dispute resolution.

As the tenant was not successful, he is not entitled to recover the filing fee.

### Conclusion

I dismiss the tenant's application 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: November 18, 2020

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Residential Tenancy Branch