



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1079166 B.C. LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPUM-DR, OPU-DR-PP, FFL

### Introduction and Preliminary Matters

On November 25, 2020, the Landlord made an Application for a Direct Request proceeding seeking an Order of Possession for unpaid utilities based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for unpaid rent and utilities pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

M.C. attended the hearing as an agent for the Landlord; however, neither Tenant made an appearance at any point during the 34-minute teleconference. All parties in attendance provided a solemn affirmation.

He advised that each Tenant was served the Notice of Hearing and evidence package by registered mail on December 31, 2020 (the registered mail tracking numbers are noted on the first page of this Decision). The registered mail tracking histories indicated that these packages were delivered on January 5, 2021. Rule 3.1 of the Rules of Procedure require these packages to have been served to the Tenants within three days of the packages being made available by the Residential Tenancy Branch. Records indicated that these packages were emailed to the Landlord on December 24, 2020.

M.C. submitted that the reason these packages were not served in accordance with the Rules of Procedure is because he was on vacation and did not see the email until December 27, 2020. As the Notice of Hearing packages were not served in accordance with the Rules of Procedure, I dismiss this Application with leave to reapply.

During the hearing, I advised M.C. that I would reserve judgement on this service, and I heard his submissions with respect to the Notice in the event that I accepted service of the Notice of Hearing packages. However, as relayed to M.C., there were too many deficiencies in the Notice for it to be considered valid. Of chief concern was that the Notice was served for unpaid utilities on the same day a written demand letter was served for those utilities. As such, service of the Notice for unpaid utilities and the

Landlord's resultant Application for an Order of Possession for those unpaid utilities are both premature.

In addition, despite the Landlord making this Application for an Order of Possession for unpaid utilities and not an Order of Possession for unpaid, even if I were to consider the rental arrears on the Notice, the Landlord has included on the Notice for rent owed during the State of Emergency period. The Landlord is precluded from attempting to end the tenancy using this Notice for affected rent during the State of Emergency without a payment plan in place. As such, I likely would not have found the Landlord's Application for an Order of Possession for unpaid rent to be successful either.

As the Notice of Hearing packages were not served in accordance with the Rules of Procedure, and as there were too many deficiencies in the Landlord's Application, I dismiss this Application with leave to reapply.

As the Landlord was not successful in this Application, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for this Application.

### Conclusion

Based on the above, the Landlord's Application is dismissed 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: March 16, 2021

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Residential Tenancy Branch