



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC, FFT

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 11:10 a.m. in order to enable the landlord to call into this teleconference hearing scheduled for 11:00 a.m. The tenants attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenants were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The tenants testified that they are not recording this dispute resolution hearing.

The tenant confirmed their email address for service of this decision.

Preliminary Issue- Service

The tenants testified that they personally served the landlord with this application for dispute resolution on February 12, 2021. No proof of service documents were entered into evidence.

Section 89 of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution:

*89(1) An application for dispute resolution,...when required to be given to one party by another, must be given in one of the following ways:*

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
- (e) as ordered by the director under section 71(1) [director's orders: delivery and service of document]...*

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

I find that the tenants have not proved, on a balance of probabilities, that the landlord was personally served on February 12, 2021 as no supporting documents such as a witnessed proof of service document were entered into evidence and the landlord did not attend. At the hearing, I advised the tenants that I was dismissing this application for failure to prove service.

Preliminary Issue- Jurisdiction

Section 4(a) of the *Act* states:

This Act does not apply to

(a) living accommodation rented by a not for profit housing cooperative to a member of the cooperative

The Occupancy Agreement entered into evidence states:

The Co-op has been incorporated under the *Cooperative Association Act of British Columbia* (the “Act”) as a not for profit housing co-operative for the purposes of acquiring and leasing residential housing units on land leased by the Co-op....

The right of the Member to possession or occupancy of a residential housing unit assigned to the Member hereunder is dependent upon the Member complying with in all respects the obligations of the member under this Occupancy Agreement and continuing to be a member in the Co-op and to hold the number of shares of the Co-po (the “Shares”) required by the Rules.

The tenants testified that they are members of the Co-op. Tenant L.K. signed the Occupancy Agreement as a member.

Based on the testimony of the parties and the Occupancy Agreement entered into evidence, I find that the property which is the subject of this dispute is living accommodation rented by a not for profit housing cooperative to a member of the cooperative. Pursuant to section 4(a) of the *Act*, I find that I do not have jurisdiction to hear the tenants’ application. The tenants’ application is therefore dismissed without leave to reapply.

Conclusion

The tenants’ application for dispute resolution is dismissed without leave to reapply for lack of jurisdiction.

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: May 07, 2021

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Residential Tenancy Branch