



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S, MNDCL-S, FFL

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order for unpaid rent in the amount of \$11,100.00; a monetary order for damage or compensation for damage of \$3,618.09, retaining the security deposit for these claims; and to recover the \$100.00 cost of their Application filing fee.

The Tenant, C.Y., and an agent for the Landlord, D.Z. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

On reviewing the service of documents, I note that the Landlord applied for dispute resolution on February 21, 2021, and was provided with the initial notice package from the RTB on March 3, 2021. The Agent said that he served the Tenants with these Notice of Hearing documents via registered mail on March 4, 2021. The Agent submitted Canada Post registered mail receipts as evidence of this mailing.

The Tenant said he was calling from Korea and that he moved there in March 2020, after he vacated the rental unit and because of the pandemic. The Tenant said he did not give the Landlord his forwarding address. However, the Parties agreed that the Tenants had provided the Landlord with their families' home addresses in Canada for service when the Tenants applied for the rental unit. The Tenant said that his family moved back to Korea when the pandemic started, and that no one was living in the family home in Canada for receipt of the hearing documents.

The Tenant said that he received the Notice of Hearing documents, because a neighbour of his family checks their mail box for post. The Tenant said that this neighbour took photos of the documents and emailed them to the Tenant in Korea.

The Agent said that he served the Landlord's evidence to the Tenants by posting it on the door of the family home on June 25, 2021. The Tenant said he has not received this

evidence yet. The Tenant that he would like to see the Landlord's evidence before the hearing, and as such, I find that the Tenant has been prejudiced in this scenario. The Agent said that he was in contact with the Tenant via instant messaging, and therefore, I find first, that the Landlord knew the Tenant was not in Canada, and therefore that he could not be served in Canada. Second, I find that the Agent could have requested the Tenant's email address through instant messaging for the purpose of serving documents as quickly and efficiently, as possible.

Not only did the Tenant not receive the Landlord's evidence, but further, the Agent submitted the evidence to the Residential Tenancy Branch ("RTB") on June 28, 2021, which was 13 days prior to the hearing.

The Agent said that he thought as long as he served the evidence by registered mail to an address provided by the Tenant that it would be deemed served on the Tenant. However, the Parties agreed that they were in contact via instant messaging and that the Agent knew that the Tenant was in Korea, due to the pandemic. As the pandemic is still a significant problem around the world, I find it more likely than not that the Agent could have inferred or found out that the Tenant would remain in Korea until it was safe to travel again.

I find in this set of circumstances that the Agent knew or should have/could have known that the Tenant was not in the country when he posted evidence on a door of the family's Canadian home on June 25, 2021. I find that this was not a case of a tenant avoiding service of documents, but a case in which the Agent should have known that service was unlikely to be successful in the manner it was executed.

The RTB Rules of Procedure set out the dispute resolution procedures, which are consistent with the principles of natural justice and administrative fairness, and with which administrative hearings, such as this, must be conducted.

### **3.1 Documents that must be served with the Notice of Dispute Resolution Proceeding Package**

The applicant must, within three days 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:

- 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].

[underlining emphasis added]

An applicant is supposed to submit their evidence when they apply for dispute resolution, pursuant to Rule 3.1(d) set out below. There may be some evidence on which an applicant wants to rely that is not available at the time the applicant applies to the RTB for dispute resolution. The applicant may submit this evidence to the RTB and serve it on the respondent(s), as soon as possible, but **not more than 14 days before the hearing**, as provided under Rule 3.14.

### **3.14 Evidence not submitted at the time of Application for Dispute Resolution**

Except for evidence related to an expedited hearing (see Rule 10), documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office **not less than 14 days before the hearing**. In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17.

[underlining emphasis added]

I find that the Landlord failed to serve the Tenant, C.Y., with any evidence at all. Further, I find that the Landlord failed to comply with the Rules in having submitted their evidence to the RTB 13 days prior to the hearing. In light of the above, I find that the Landlord did not comply with the service requirements under the Act and, therefore, I dismiss the Landlord's Application with leave to reapply.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: July 12, 2021