



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Capital Region Housing Corporation and  
[tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

ERP  
CNR, RR, RP, PSF  
OPR-DR, MNR-DR, FFL

### **Introduction**

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with applications filed by both the tenants and the landlord pursuant the Act.

The tenants applied for:

- An order for emergency repairs pursuant to section 33;
- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities pursuant to sections 46 and 55;
- An order to reduce rent for repairs/services/facilities agreed upon but not provided pursuant to section 65;
- An order for regular repairs pursuant to sections 32 and 62; and
- An order to provide services or facilities required by a tenancy agreement or law pursuant to section 62.

The landlord applied for:

- An Order of Possession for unpaid Rent by direct request, pursuant to sections 46 and 55;
- A monetary order for unpaid rent by direct request, pursuant to section 67; and
- Authorization to recover the filing fee for this application from the opposing party pursuant to section 72.

The tenants did not attend this hearing that was scheduled to commence at 11:00 a.m. and concluded at 11:20 a.m. The teleconference line remained open throughout the hearing and 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 monitoring system that the landlord and I were the only ones who had called into this teleconference.

The landlord was represented at the hearing by Senior Property Manager, KL ("landlord"). The landlord was duly affirmed and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

#### Preliminary Issue

The landlord gave the following testimony. On May 25, 2021, the landlord was granted an order of possession following an expedited hearing for an early end to tenancy. The tenants vacated the rental unit some time in early June 2021.

The landlord attempted to serve the tenants with their Notice of Dispute Resolution Proceedings package on July 21, 2021. The landlord sent the package to the tenant, MM by registered mail to MM's former address since MM vacated the unit without providing a forwarding address. The landlord sent the tenant KD his package by email to an email address once used by the tenant on January 29, 2021.

The landlord testified that they did not serve the tenants immediately after receiving the Notice of Dispute Resolution Proceedings from the Residential Tenancy Branch because they were waiting for the tenant's evidence with respect to the tenant's application seeking emergency repairs.

The landlord testified that subsequent to the tenants vacating the rental unit, the landlord has filed a further Application for Dispute Resolution seeking unpaid rent for May and June as well as compensation for damages. That dispute is set for hearing in January 2022.

#### Analysis

The landlord gave undisputed testimony stating the tenants vacated the rental unit subsequent to the landlord obtaining an order of possession on May 25<sup>th</sup>. Pursuant to section 44, the tenancy has ended. As the tenancy has ended, the tenants' applications are dismissed pursuant to section 62(4) of the *Act* as they no longer disclose disputes that may be determined under Part 5 of the *Act*.

The landlord's application seeking an order of possession is likewise dismissed due to the tenancy already having ended. The only issues before me are whether the landlord

is entitled to a monetary order for unpaid April rent and whether the landlord can recover the filing fee.

The landlord testified she attempted to serve MM with the Application for Dispute Resolution by registered mail to MM's former address. Section 89(1)(c) only allows service of an Application for Dispute Resolution by registered mail to "the address at which the person resides". As MM was not residing at the rental unit at the time the Application for Dispute Resolution was sent via registered mail, I find the landlord has not served MM in accordance with section 89 of the *Act*. Consequently, the application against MM is dismissed with leave to reapply.

The landlord testified she served the tenant KD by email to an email address once used by the tenant. Section 43(2) of the Residential Tenancy Regulations states:

*For the purposes of section 89 (1) (f) [special rules for certain documents] of the Act, the documents described in section 89 (1) of the Act may be given to a person by emailing a copy to an email address provided as an address for service by the person.*

In this case, simply because the tenant KD once sent an email to the landlord using the stated email address on January 29<sup>th</sup> does not necessarily mean KD has expressly provided that address as an address for service. In order for me to be satisfied KD is willing to accept service by email, I require KD's expressed consent to do so. No evidence was provided by the landlord to indicate KD has done so. I find the landlord has not served KD in accordance with section 89 of the *Act* or section 43 of the Regulations. Consequently, the application against KD is likewise dismissed with leave to reapply.

I note that the landlord has indicated they have filed another Application for Dispute Resolution seeking rent and compensation for damages. As that hearing is to take place in January 2021, the landlord is at liberty to amend that unheard application to seek unpaid rent for the month of April. The landlord is cautioned that the amendment must be made in accordance within the timelines and other constraints provided in rule 4 of the Residential Tenancy Branch rules of procedure.

### Conclusion

The tenants' applications are dismissed without leave to reapply.

The landlord's application seeking an order of possession is dismissed without leave to reapply.

The landlord's application seeking unpaid rent for the month of April 2021 is dismissed with leave to reapply or with leave to amend their outstanding Application for Dispute Resolution in accordance with rule 4.

The decision to order payment of the filing fee is discretionary upon the arbitrator and in accordance with section 72 of the *Act*, the landlord's filing fee will not be recovered.

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 12, 2021

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Residential Tenancy Branch