



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPL

### Introduction

This hearing dealt with the Application by the Landlord filed under the Residential Tenancy Act (the “Act”) for an order of possession to enforce a Two-Month Notice for Landlords Use of the Property (the Notice) issued on January 25, 2021. The matter was set for a conference call.

The Landlord’s Agent (the “Landlord”) attended the hearing and was affirmed to be truthful in their testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered. Section 59 of the *Act* states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that they mailed the Notice of Dispute Resolution Hearing documents to the Tenant on August 5, 2021 and submitted a Canada post tracking number as evidence of service.

Section 59(3) of the *Act* and the Residential Tenancy Branch Rules of Procedure states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing within three days of the Notice of Dispute Resolution Proceeding Package being made available to the applicant by the Residential Tenancy Branch.

### **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].”

I have reviewed the Notice of Hearing document created for these proceedings, noting that this document was created and given to the Landlord on May 4, 2021. However, this document was not given to Canada Post for delivery until August 5, 2021, 93 days after the document was created.

When asked, the Landlord testified that they had also served these documents by posting them to the front door of the rental unit; however, the Landlord did not provide evidence of door service to these proceedings. I find that the Landlord’s has is not provided sufficient evidence to prove the door service of the Notice of Hearing documents. Consequently, I find that the Tenants have not been duly served the notification of this hearing documents as required, pursuant to section 59 of the *Act*.

Additionally, during a review of the documents submitted into evidence by the Landlord for these proceedings, it was noted the Landlord had not submitted a copy of the Two-Month Notice for Landlords Use of the Property. The Landlord testified that they did submit the Notice in their evidence package submitted to the Residential Tenancy Branch.

In order for a notice to end tenancy to be valid, it must meet the form and content required by the Act. Section 52 of the Act states the following:

***Form and content of notice to end tenancy***

***52 In order to be effective, a notice to end a tenancy must be in writing and must***

- (a) be signed and dated by the landlord or tenant giving the notice,*
- (b) give the address of the rental unit,*
- (c) state the effective date of the notice,*
- (d) except for a notice under section 45 (1) or (2) [tenant’s notice], state the grounds for ending the tenancy,*

*(d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and  
(e) when given by a landlord, be in the approved form.*

Section 52(e) of the *Act* requires that a notice issued by a landlord to end a tenancy must be on the approved form. In this case, that approved form would need to have been the Residential Tenancy Branch form #RTB-32 Two Month Notice to End Tenancy for Landlord's Use of Property. During the review of the Landlord's evidence, it was noted that the Landlord has submitted a BC Real Estate Association document, titled "TENANT OCCUPIED PROPERTY – BUYERS NOTICE TO SELLER FOR VACANT POSSESSION," dated January 24, 2021. However, no Residential Tenancy Branch form #RTB-32 Two Month Notice to End Tenancy for Landlord's Use of Property was contained in the Landlord's evidence package, and it is unclear if this required document has been served to the Tenant.

Accordingly, I dismiss the Landlord's claim for an Order of Possession to enforce the Notice to end the tenancy, as there is no evidence before me that this notice had been issued to the Tenant.

### Conclusion

I dismiss the Application for Dispute Resolution.

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 26, 2021

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Residential Tenancy Branch