



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ROYAL LEPAGE IN THE COMOX  
VALLEY and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ET, FF

### Introduction, Preliminary and Procedural Matters-

This expedited hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (Act) made on August 13, 2021, for:

- an order ending the tenancy earlier than the tenancy would end if a notice to end the tenancy were given under section 47 of the Act [landlord's notice for cause]; and
- to recover the cost of the filing fee.

The landlord's agents (agents), the tenant and the tenant's agent attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The parties were instructed they were not allowed to record the hearing and they affirmed they were not recording the hearing.

The landlord said that they served the tenant with their Application for Dispute Resolution, evidence, and Notice of Hearing (application package) on August 25, 2021, by attaching it to the tenant's door. The landlord was provided the application package by email on August 24, 2021, to serve to the tenant, with instructions to serve the tenant by August 25, 2021.

When questioned, the tenant was unsure when he received the application package, as he was out-of-town when the documents were posted. The tenant submitted that it was possibly in September when he received the documents, as he mostly stays out-of-town all the time. The tenant submitted that the landlord was made aware of this fact from the time the tenancy began.

The landlord mentioned in the hearing that the tenant is not in the rental unit often.

The tenant was also questioned about the One Month Notice to End Tenancy for Cause (Notice), which was placed into evidence by the landlord. The Notice was dated June 25, 2021, and the landlord's agent said the tenant was served the Notice on that date, by attaching it to the tenant's door. The effective end of tenancy, or move-out date, was July 31, 2021.

The tenant confirmed receiving the Notice, perhaps a couple of weeks after the Notice was posted, as he was out-of-town.

When questioned, the landlord's agent said they did not file an application for dispute resolution seeking an order of possession of the rental unit pursuant to the Notice, as the tenant informed them he filed an application to dispute it. The landlord's agent said that when they received the tenant's application, it was in dispute of their 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice), not the One Month Notice. By that time, they filed the present application.

As to the landlord's application, Residential Tenancy Branch Rules of Procedure (Rules) 10.3 states the following for expedited hearings:

*The applicant must, within one day 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:*

- *the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;*
- *the Respondent Instructions for Dispute Resolution;*
- *an Order of the director respecting service;*
- *the Expedited Dispute Resolution Process Fact Sheet (RTB-114E) provided by the Residential Tenancy Branch; and*
- *evidence submitted to the Residential Tenancy Branch online or in person, or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 10.2 [Applicant's Evidence Relating to an Expedited Hearing].*

In this case, the Notice of Hearing and application for dispute resolution package was provided to the landlord on August 24, 2021, and they were required to serve these documents to the tenant by August 25, 2021.

Under section 90 of the Act, a document served by attachment to the door or other conspicuous place is deemed received three days later, absent evidence to the contrary. Here, the landlord's application package for this hearing was attached on August 25, 2021, and deemed received on August 28, 2021.

I therefore find the landlord submitted insufficient evidence that their application package was served to the tenant according to the requirements of Rule 10.3 and within one day of receiving the application package, as was deemed served on August 28, 2021.

I therefore dismiss the landlord's application, **with leave to reapply**, due to service issues as described above. For this reason, I am unable to consider the merits of the landlord's application.

Leave to reapply does not extend any applicable time limitation deadlines.

#### **Reminders to the tenant –**

As I mentioned to the tenant at the hearing, when he failed to file an application to dispute the landlord's One Month Notice, under section 47(5) of the Act, he was conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, or in this case, July 31, 2021, and **must** vacate the rental unit by that date. By not doing so, he is in contravention of the Act. What this means is your tenancy ended on July 31, 2021, by operation of the Act.

The landlord may file another application seeking enforcement of their One Month Notice, if the tenant fails to promptly vacate the rental unit.

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: September 15, 2021

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Residential Tenancy Branch