



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

CNQ

### **Dispute Codes**

### **Introduction, Preliminary and Procedural Matters-**

This hearing convened in response to the tenant's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act), filed on June 10, 2021, for:

- an order cancelling a Two Month Notice to End Tenancy Because Tenant Does Not Qualify for Subsidized Rental Unit (Notice).

Filed in evidence was the signed Notice, listing May 14, 2021, as the date signed, for an effective move-out date of July 31, 2021. The tenant confirmed receiving the Notice on May 28, 2021.

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

The parties were informed that recording of Residential Tenancy Branch (RTB) hearings were prohibited and all three parties affirmed they were not recording the hearing.

When attempting to confirm that the tenant properly served the landlord with their Application for Dispute Resolution, evidence, and Notice of Hearing (application package), the tenant said that the landlord was served by email.

The agent denied receiving the tenant's application, notice of hearing, or any evidence, and only found out about the hearing when speaking with RTB staff.

When asked for more details about service, the tenant said they just knew the landlord was served by email, but could not provide the date or any other details. The tenant

mentioned their aunt, who worked for their lawyer, had sent the documents. The tenant said that they understood that the landlord could be served by email because they received documents by email.

In turn, the agent said they have never provided the tenant with an email specifically for the purpose of serving documents.

I informed the parties that I could not proceed on the tenant's application due to service issues, and as a result, I would dismiss the tenant's application. The parties were informed that as the tenant's application seeking cancellation of the Notice was being dismissed, I am required to grant the landlord an order of possession of the rental unit. The agent confirmed that they wanted an order of possession.

Directly thereafter, I was informed that the landlord had already been issued an order of possession of the rental unit on a previous application for dispute resolution, and that order of possession was served to the tenant on October 8, 2021, by attaching it to the tenant's door, as confirmed by the agent. The tenant informed me of being aware of the order of possession, but denied receiving it yet.

I note that the order of possession of the rental unit granted to the landlord was a result of the landlord's application for dispute resolution under the ex-parte direct request process, due to unpaid monthly rent. A Decision, monetary order, and order of possession were granted to the landlord on October 1, 2021.

### Analysis and Conclusion

Section 59(3) of the Act requires that a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it.

Section 89(1) of the Act requires that an application for dispute resolution 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 documents]*;
- (f) by any other means of service provided for in the regulations.

Residential Tenancy Regulation 43(2) allows for documents to be given to a person by emailing a copy to an email address provided as an address for service by the person.

In the case before me, the tenant was unable to provide sufficient evidence that he served the application for dispute resolution to the landlord by any method and the agent was clear in their testimony that they did not receive the tenant's application.

I therefore find the tenant submitted insufficient evidence that they served the landlord their application for dispute resolution and notice of this hearing in a manner required by the Act and Regulation.

As a result, I therefore **dismiss** the tenant's application, **without leave to reapply**, as the deadline for disputing the Notice has now passed.

Upon review, I find the Notice was in the approved form with content meeting the statutory requirements under section 52 the Act.

Given the above, pursuant to section 55(1)(b) of the Act, I must grant an order of possession of the rental unit to the landlord.

I therefore grant the landlord an order of possession of the rental unit effective and enforceable two (2) days after service on the tenant, as the effective move-out date has passed.

Should the tenant fail to vacate the rental unit pursuant to the terms of the order after being served, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is **cautioned** that costs of such enforcement, **including bailiff fees**, are recoverable from the tenant.

Although I am now aware that the landlord has already been issued an order of possession of the rental unit, dated October 1, 2021, my decision on the tenant's application was made prior to being informed.

As a result, I issue the landlord another order of possession out of an abundance of caution, but remind the parties that the landlord's first order of possession dated October 1, 2021, which has been served, is fully effective and enforceable.

The tenant is aware of the October 1, 2021, order of possession granted to the landlord being attached to their door on October 8, 2021, and that the landlord is being issued another order of possession.

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: October 8, 2021

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Residential Tenancy Branch