



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PACIFICA HOUSING ADVISORY  
ASSOCIATION and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPQ, FFL

### Introduction

This hearing dealt with the landlord's application, pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession Because the Tenant Does Not Qualify for Subsidized Rental Unit, pursuant to section 55; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 13 minutes from 9:30 to 9:43 a.m. The landlord's two agents, landlord LH ("landlord") and "landlord KC" attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Both landlord agents confirmed that they were resident services coordinators for the landlord company named in this application and that they had permission to speak on its behalf.

At the outset of this hearing, I informed both landlord agents that recording of this hearing was not permitted by anyone, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*. Both landlord agents separately affirmed, under oath, that they would not record this hearing.

I explained the hearing process to both landlord agents. They had an opportunity to ask questions. They did not make any adjournment or accommodation requests.

Preliminary Issue – Service of Landlord’s Application

The landlord was required to serve the tenant with a copy of the landlord’s application, notice of hearing, and evidence, within three days of receiving it from the RTB, as per Rule 3.1 of the RTB *Rules of Procedure*.

The landlord testified that the tenant was served with the above documents on July 19, 2021, by registered mail to the rental unit address where the tenant is still residing. She provided a Canada Post tracking number verbally during this hearing. She claimed that the mail was returned to the landlord as sender.

The landlord provided a Canada Post receipt and tracking report with this application but did not refer me to it during this hearing.

During the hearing, when I checked the Canada Post website using the tracking number that the landlord provided, it indicated that the mail was processed on July 21, 2021. The landlord stated that she did not know why the date was different than the July 19, 2021 date that she provided to me. When she looked up the information on the Canada Post website herself, she said that she found the same information as me. Landlord KC stated that sometimes there was a two-day delay at the Canada Post office, however the tracking report does not indicate any delay in processing by Canada Post.

On August 15, 2021, the Canada Post website states: “Item cannot be delivered; more details to be provided” and on August 24, 2021: “Item on hold at a secure facility; contact Customer Service.” The mail was not delivered, no signature was recorded, and no item was unclaimed or refused for service. The landlord confirmed that she did not follow up with Canada Post, and indicated that maybe she was mistaken that the mail was returned to the landlord as sender.

The landlord testified that she re-sent the above documents to the tenant on October 8, 2021, by way of registered mail to the rental unit address where the tenant is still residing. She provided a Canada Post tracking number verbally during this hearing. She did not provide a Canada Post receipt or tracking report for the mail. She said that she re-sent the package because she was unsure of whether the tenant received the first one, since another landlord manager was handling it before her, and then she took over this file. When I asked why the mail was sent on October 8, 2021, only 20 days prior to this hearing on October 28, 2021, she said that it only came on her desk from the previous manager at that time. I informed her that the landlord filed this application on June 30, 2021, almost 4 months prior to this hearing.

During the hearing, when I checked the Canada Post website using the above tracking number that the landlord provided, it indicated that the mail was processed on October 8, 2021. I informed the landlord that she could look up the information on the Canada Post website herself, if she wanted to confirm the information with me.

On October 12 and 13, 2021, the Canada Post website indicates that the item is available for pickup and on October 18, 2021, it states: "Final Notice; Item will be returned to sender if not collected within 10 days." The landlord confirmed that the mail had not yet been picked up and was still available for the tenant to pick up. The date of this hearing, October 28, 2021, is 10 days after the above date of October 18, 2021, for the tenant to pick up the mail, as per the above information. The above mail was not delivered, no signature was recorded, and no item was unclaimed or refused for service. The landlord confirmed that she was aware of this information.

Residential Tenancy Policy Guideline 12 states the following, in part (emphasis added):

*Registered mail includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a **named person** is available.*

*Proof of service by Registered Mail should include the original Canada Post Registered Mail **receipt containing the date of service, the address of service, and that the address of service was the person's residence at the time of service, or the landlord's place of conducting business as a landlord** at the time of service as well as a **copy of the printed tracking report**.*

The landlord provided the incorrect date of service for the first mailing, which was actually July 21, 2021, and not July 19, as indicated by her. This is not within 3 days of the notice of hearing, dated July 16, 2021, being provided to the landlord by the RTB, to serve the tenant by July 19, 2021. The landlord confirmed that she was required to serve the tenant by July 19, 2021, since she received the above documents on July 16, 2021. The above mail was not delivered, no signature was recorded, no item was unclaimed or refused for service, and the landlord did not follow up with Canada Post to inquire.

The second mailing on October 8, 2021 is not within 3 days of the notice of hearing, dated July 16, 2021, being provided to the landlord by the RTB, to serve the tenant by July 19, 2021. The landlord confirmed that she was required to serve the tenant by July 19, 2021, since she received the above documents on July 16, 2021. The above mail

was not delivered, no signature was recorded, no item was unclaimed or refused for service, the tenant still has an opportunity to pick up the item as of the date of this hearing, and the landlord did not follow up with Canada Post to inquire.

Accordingly, I find that the landlord did not serve the tenant with the above required documents. The mail was not delivered, no signature was recorded, no item was unclaimed or refused for service, and the tenant still has an opportunity to pick up the October 2021 item as of the date of this hearing. Therefore, service cannot be deemed on the tenant and delivery to named people cannot be confirmed as per Residential Tenancy Policy Guideline 12 above. Further, the landlord served the above documents on both occasions in July and October 2021, beyond the 3-day deadline of July 19, 2021, contrary to Rule 3.1 of the RTB *Rules of Procedure*.

I find that the tenant was not served with the landlord's application, as per section 89 of the *Act*. I notified the two landlord agents that the landlord's application was dismissed with leave to reapply, except for the filing fee. I informed them that they could file a new application, pay a new filing fee, and provide proof of service at the next hearing, if they want to pursue this matter further. They confirmed their understanding of same.

### Conclusion

The landlord's application to recover the \$100.00 filing fee is dismissed without leave to reapply.

The remainder of the landlord's application is dismissed with leave to reapply.

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 28, 2021

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Residential Tenancy Branch