



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

For the tenants: CNC, OLC, CNR, FFT

For the landlords: FFL, MNR-DR, OPR-DR

### **Introduction**

This hearing dealt with a cross application. The tenants' application pursuant to the Residential Tenancy Act (the Act) is for:

- cancellation of a One Month Notice to End Tenancy for Cause, pursuant to section 47;
- an order for the landlord to comply with the Act, the Residential Tenancy Regulation and/or tenancy agreement, pursuant to section 62;
- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, pursuant to section 46; and
- an authorization to recover the filing fee for this application, under section 72.

The landlords' application pursuant to the Act is for:

- a monetary order for unpaid rent, pursuant to section 26;
- an order of possession under the 10 Day Notice to End Tenancy for Unpaid Rent pursuant to sections 46 and 55; and
- an authorization to recover the filing fee for this application, under section 72.

Tenants MI (the tenant) and MA and landlords TC (the landlord) and LC attended the hearing. TC represents W&S Bernard Investments Ltd. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Preliminary Issue – service of the landlords’ application

The notice of hearing for the landlords’ application is dated July 26, 2021. The landlord affirmed he served the notice of hearing by registered mail sent on October 14, 2021.

The tenant stated he did not receive the notice of hearing and he was not aware of the landlords’ application.

Rule of Procedure 3.1 states:

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].

(emphasis added)

Rule of Procedure 3.14 states that “evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.”

Based on the landlord’s testimony, I find the landlord did not serve the notice of hearing on time.

Accordingly, I dismiss the landlords’ application with leave to reapply.

As the landlords were not successful, I find that the landlords are not entitled to recover the \$100.00 filing fee.

Preliminary Issue – Vacant Rental Unit

At the outset of the hearing the tenant affirmed he will vacate the rental unit today and that he will return the keys to the landlord today.

The tenants' application for an order to cancel the notices to end tenancy and for an order for the landlord to comply with the Act is moot since the tenancy will end today.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the tenants' application.

I dismiss the tenants' application without leave to reapply.

As the tenants were not successful, I find that the tenants are not entitled to recover the \$100.00 filing fee.

#### Conclusion

I dismiss the landlords' application with leave to reapply.

I dismiss the tenants' application without 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