



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BC HOUSING  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **FFT, OPT**

### **Introduction**

This hearing dealt with an application filed pursuant to the *Residential Tenancy Act* (the “Act”) for:

- Authorization to recover the filing fee for this application from the opposing party pursuant to section 72; and
- An order of possession to the tenant pursuant to section 54.

Both the applicant and the respondent attended the hearing. The respondent was represented by property manager, AP. As both parties were present, service of documents was confirmed. The respondent acknowledged service of the applicant’s Notice of Dispute Resolution Proceedings and stated she had no issues with timely service of documents.

The applicant denied receiving the respondent’s evidence. The respondent testified that she sent the documents by registered mail to the address provided on the Notice of Dispute Resolution Proceedings. Upon reading the Notice of Dispute Resolution Proceedings, it appears the Residential Tenancy Branch made an error and mis-identified the applicant’s address by providing the wrong unit number. I determined that the respondent’s evidence was not sufficiently served upon the applicant due to no fault of her own. As a result, I ruled that the respondent’s documentary evidence would not be admitted although the respondent had the full opportunity to describe what she submitted at the beginning of the hearing and make submissions as to each piece’s relevance.

### **Issue(s) to be Decided**

Should the applicant be granted possession of the unit?

### Background and Evidence

The facts are as follows. When the tenant moved into the rental unit, he filled in a “resident profile” naming his next of kin. The applicant in this proceeding was not named anywhere on the “resident profile”. The tenant passed away while at the hospital on August 5, 2021. The respondent has since locked the tenant’s suite pending the next of kin from attending to clear out the tenant’s unit.

The respondent testified that the tenant was currently subjected to a “restraining order” against him from the courts which prevented him from contacting the applicant in this hearing. That “restraining order” was still in effect when the tenant died.

The applicant testified she is the girlfriend/fiancé of the tenant. She has her own tenancy agreement at the same building as the tenant. She is not a tenant listed on the tenancy agreement signed between the (deceased) tenant and the landlord.

She has a certified copy of the tenant’s last will and testament that shows she is the sole executor of the tenant’s financial affairs. The applicant has not had the will probated at the Supreme Court, testifying she was unaware that was a requirement. The applicant submits that the will allows her to enter the tenant’s unit to distribute the tenant’s worldly belongings as she sees fit and to retrieve her own possessions from the tenant’s suite.

### Analysis

The applicant seeks an order of possession to the tenant pursuant to section 54 of the Act. Section 54 reads:

#### **54 Order of possession for the tenant**

(1) *A tenant who has entered into a tenancy agreement with a landlord* may request an order of possession of the rental unit by making an application for dispute resolution.

(2) The director may grant an order of possession to a tenant under this section before or after the date on which the tenant is entitled to occupy the rental unit under the tenancy agreement, and the order is effective on the date specified by the director.

(3) The date specified under subsection (2) may not be earlier than the date the tenant is entitled to occupy the rental unit.

(emphasis in italics and underline added)

Residential Tenancy Branch Policy Guideline PG-51 [Expedited Hearings] states:

#### **Order of Possession for Tenant**

Under section 54 of the RTA and section 47 of MHPTA, a tenant may apply for an order of possession for the rental unit or home site if they have a tenancy agreement with the landlord. These types of applications may arise when a tenant and landlord have signed a tenancy agreement and the landlord refuses to give the tenant access to the rental unit, or the landlord has locked the tenant out of their rental unit.

In this case, the tenant acknowledged she did not have a tenancy agreement with the landlord granting her use or occupancy of the (deceased) tenant's rental unit. As such, I find the applicant is not entitled to an order of possession granting possession of the (deceased's) tenant's unit. The application is dismissed without leave to reapply.

#### Conclusion

The application is dismissed 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: November 04, 2021

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Residential Tenancy Branch