



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      PFR

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for an order of possession for the rental unit in order to perform renovations or repair that require the rental unit to be vacant, under section 49.2.

I left the teleconference connection open until 9:40 A.M. to enable the tenant to call into this teleconference hearing scheduled for 9:30 A.M. The tenant did not attend the hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending party affirmed he understands 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."

The landlord affirmed he served the notice of hearing and the evidence (the materials) by regular mail on December 04, 2021. The landlord emailed and texted the tenant to inform that he served the materials by regular mail and the tenant confirmed receipt of the text message.

Section 89(1) of the Act states:

An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, 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].

(emphasis added)

Residential Tenancy Branch Policy Guideline 12 (March/2021) states:

3. SPECIAL REQUIREMENTS FOR SERVICE OF DOCUMENTS for:

- An application for dispute resolution
- except for applications by a landlord for an order of possession or an order ending a tenancy early
- A Residential Tenancy Branch decision to proceed with a review of a Decision

[...]

There are only four methods of service that may be used for these matters. These are:

Personal service

o Where a tenant is personally serving a landlord, the tenant must serve a document by leaving a copy of it with the landlord or an agent of the landlord.

o Where a landlord is personally serving a tenant, the landlord must serve by leaving a copy with the tenant. In cases where there are multiple tenants, the landlord must serve a copy to each co-tenant separately.

This requires physically handing a copy of the document to the person being served. If the person declines to take the document, it may be left near the person so long as the person serving informs the person being served of the nature of the document being left near them.

Registered Mail

o Where a tenant is serving a landlord by Registered Mail, the address for service must be where the landlord resides at the time of mailing or the address at which the landlord carries on business as a landlord. See "Service of documents on an incorporated company or society" in section 6 below or "Serving documents at the address at which the landlord carries on business as a landlord" in section 7 below.

o Where a landlord is serving a tenant by Registered Mail, the address for service must be where the tenant resides at the time of mailing, or the forwarding address provided by the tenant. Registered Mail includes any method of mail delivery provided by

Canada Post for which confirmation of delivery to a named person is available. This includes Express post, if the signature option is used. Parties using Registered Mail or Express Post should obtain a copy of the proof of delivery from Canada Post and submit that document as proof of service. This can be obtained from Canada Post's website. A screen shot or picture of the information is sufficient.

Email service

o To serve documents by email, the party being served must have provided an email address specifically for the purposes of being served documents. If there is any doubt about whether an email address has been given for the purposes of giving or serving documents, an alternate form of service should be used, or an order for substituted service obtained.

A Residential Tenancy Branch Order Regarding Service

o See "Orders for substituted service" in section 13 below and "Proof of service" in section 14 below.

Regular mail is not a permitted method of service for the materials. The tenant did not attend the hearing. Accordingly, I find that the landlord failed to prove service in accordance with section 89(1) of the Act.

The landlord must serve the notice of hearing of an application under section 49.2 of the Act in accordance with section 89(1).

Conclusion

I dismiss the application 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: January 25, 2022

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Residential Tenancy Branch