



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Amber Properties Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNETC, MNSD, FFT

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67;
- a Monetary Order for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenants attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenants were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The tenants testified that they are not recording this dispute resolution hearing.

The tenants confirmed their email address for service of this decision.

Tenant C.S. testified that the landlords were served with a copy of this application for dispute resolution via registered mail on September 17, 2021. A Canada Post registered mail receipt dated September 17, 2021 was entered into evidence. Tenant C.S. testified that the registered mail was returned to sender and the landlord was personally served with this application for dispute resolution last week. No proof of service documents for the personal service were entered into evidence.

Tenant C.S. testified that the tenants signed a tenancy agreement with the landlord pertaining to the subject rental property; however, the tenancy agreement was not entered into evidence. The tenants entered into evidence page two of a move in/out condition inspection report; however, the first page was not provided. None of the evidence entered by the tenant proves that the landlord and the tenants had a landlord/tenant relationship or provide the landlord's address for service. The registered mail receipt does not state the address the package was sent to.

Rule 3.1 of the Residential Tenancy Branch Rules of Procedure (the "Rules") states:

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].

Rule 3.5 of the Rules states:

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

Section 89(1) of the *Act* states that 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*].

I find that the tenants have not proved that the landlord was served via registered mail at the address at which the landlord carries on business as a landlord because the registered mail receipt does not state who the package was sent to or where it was sent. I also find, that without a document confirming the landlord's address for service, such as a tenancy agreement, had the registered mail receipt been connected with an address, I would not be able to determine if the address for service was correct.

I find that the tenants have not proved that the landlords were personally served as no proof of service documents were entered into evidence. Nonetheless, had the landlord been served, the service would have been significantly after the three-day time limit set out in Rule 3.1 of the *Rules*.

Pursuant to my above findings, I dismiss the tenants' application for dispute resolution with leave to reapply, for failure to prove service in accordance with the *Act* and *Rules*.

I notified the tenants that if they wished to pursue this matter further, they would have to file a new application. I cautioned the tenants to be prepared to prove service at the next hearing, as per section 89(1) of the *Act*.

I find that since the tenants' application was dismissed, the applicant is not entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

Conclusion

I dismiss the tenants' application to recover the \$100.00 filing fee without leave to reapply.

The remainder of the tenants' 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: March 11, 2022

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Residential Tenancy Branch