



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction, Preliminary and Procedural Matters-

This hearing convened to deal with the landlord's application for dispute resolution (application), filed September 3, 2021, seeking remedy under the Residential Tenancy Act (Act) for:

- compensation for a monetary loss or other money owed; and
- to recover the cost of the filing fee.

The landlord attended; the tenant did not attend the telephone conference call hearing.

As a result, service of the landlord's Application for Dispute Resolution, evidence, and Notice of Hearing (application package) was considered.

The landlord in his application said the date the tenancy ended was September 2, 2021. Included in the landlord's evidence was a letter dated August 16, 2021, from BC Hydro informing the landlord that the tenant in the rental unit moved out on July 31, 2021.

No evidence was submitted by the landlord which showed that the tenant resided in the rental unit beyond September 2, 2021, and the evidence of the landlord indicates the tenant vacated the rental unit on or before July 31, 2021.

As to service of their application package, the landlord provided a statement which asserted that he posted the "Dispute resolution paperwork" to the door of the rental unit address on September 17<sup>th</sup>, 2021. The statement was signed by a third party, who apparently acted as agent for the landlord at times during the tenancy.

### Analysis and Conclusion

Section 59(3) of the Act requires that a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it.

Section 89(1) of the Act requires that an application for dispute resolution must be given by leaving a copy with the person or by registered mail to the address at which the person resides, or by registered mail to a forwarding address provided by the tenant.

In the case before me, the landlord, through their application and evidence demonstrated that the tenant did not reside in the rental unit at anytime after September 2, 2021.

As the landlord confirmed that the application for dispute resolution was attached to the door of the rental unit in which the tenant no longer resided, I find the landlord submitted insufficient evidence that their application for dispute resolution was served in a manner required by the Act.

Both parties have a right to a fair hearing and the tenant would not be aware of the hearing without having been served the Notice of a Dispute Resolution Hearing and application as required by the Act.

Even though the landlord through his application stated the tenancy was over on September 2, 2021, the landlord presumably argued that the service was proper because the tenant failed to provide a written notice to vacate, pursuant to section 45 of the Act. The landlord is informed that under section 44(d) of the Act, one way a tenancy ends is when a tenant vacates or abandons the rental unit. Nonetheless, the evidence of the landlord demonstrated that the tenant was not residing at the address to which they served the application package.

I therefore dismiss the landlord's application, with leave to reapply.

Leave to reapply does not extend any applicable time limitation deadlines.

As I have not considered the merits of the landlord's application, I dismiss their request to recover the cost of the filing fee, 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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: March 18, 2022

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Residential Tenancy Branch