



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding FIRSTSERVICE RESIDENTIAL BC  
LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR-DR-PP, MNR-DR, FFL

### Introduction

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

- an order of possession for unpaid rent with a repayment plan, pursuant to section 55;
- a monetary order for unpaid rent of \$2,154.80, pursuant to section 67; and
- authorization to recover the \$100.00 filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 13 minutes. The landlord's two agents ("landlord GJ" and "landlord MD") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing began at 11:00 a.m. and ended at 11:13 a.m. I monitored the teleconference line throughout this hearing. 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's two agents and I were the only people who called into this teleconference.

The landlord's two agents confirmed their names and spelling. Landlord GJ said that he was a property manager and landlord MD said that he was a building manager, both employed by the landlord company ("landlord") named in this application. Both landlord agents confirmed that they had permission to represent the landlord at this hearing.

Landlord GJ stated that the landlord is an authorized agent for the owner of the rental unit. He said that both landlord agents had permission to represent the owner at this hearing. He confirmed the rental unit address. He provided his email address for me to send a copy of my decision to the landlord after this hearing.

I informed the landlord's two agents that recording of this hearing was not permitted by anyone, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("Rules"). Both landlord agents separately affirmed, under oath, that they would not record this hearing.

I explained the hearing process to the landlord's two agents. They had an opportunity to ask questions. They did not make any adjournment or accommodation requests.

#### Preliminary Issue – Service of Landlord's Application

This hearing was originally scheduled as a direct request proceeding, which is a non-participatory hearing. The direct request proceeding is based on the landlord's paper application only, not any submissions from the tenant. An "interim decision," dated December 29, 2021, was issued by an Adjudicator for the direct request proceeding. The interim decision adjourned the direct request proceeding to this participatory hearing. A notice of reconvened hearing, dated December 29, 2021, was also issued.

The Adjudicator noted the following at page 3 of the interim decision, as the reason for the adjournment to a participatory hearing (emphasis in original):

#### Analysis

*In an ex parte Direct Request Proceeding, the onus is on the landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and that such evidentiary material does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the landlord cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.*

*In this type of matter, the landlord must prove that they served the tenant with the 10 Day Notice in a manner that is considered necessary as per sections 71(2)(a) and 88 of the Act. Residential Tenancy Policy Guideline #39 provides the key elements that need to be considered when making an application for Direct Request.*

*Proof of service of the 10 Day Notice to End Tenancy may take the form of:*

- registered mail receipt and printed tracking report;*
- a receipt signed by the tenant, stating they took hand delivery of the document(s); or*
- **a witness statement that they saw the landlord deliver the document(s).***

*On the second page of the Proof of Service Notice to End Tenancy, there is no signature of a witness to confirm service of the 10 Day Notice to the tenant. I note the landlord submitted a photograph showing a 10 Day Notice attached to a door. However, I find this is not adequate evidence of service for a Direct Request, as indicated in Policy Guideline #39.*

*I find I am not able to confirm service of the 10 Day Notice to the tenant, which is a requirement of the Direct Request proceeding, and that a hearing is necessary to address this issue.*

The landlord was required to serve the tenant with a copy of the interim decision, the notice of reconvened hearing, and all other required documents, within three days of receiving it, as outlined in the interim decision itself.

Landlord GJ stated that he did not have the above service information in front of him during this hearing. He asked landlord MD to answer the question. He said that landlord MD had a lot of paperwork to look through, so it may take awhile.

Landlord MD stated that he thought the tenant was served with the above documents on December 30, 2021, by way of registered mail. He spent approximately 13 minutes during this hearing searching for the registered mail tracking number. He provided an invalid tracking number, which included a series of numbers, rather than the letter-number format, as per the landlord's documents submitted for this hearing. When I asked him to provide a valid tracking number, he said that he could not find one. The landlord did not provide a copy of the registered mail tracking report for this hearing.

Section 89(1) of the *Act* outlines the methods of service for an application for dispute resolution, which reads in part as follows (my emphasis added):

*89 (1) An application for dispute resolution ..., 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].*

Residential Tenancy Policy Guideline 12 states the following, in part (my emphasis added):

*Registered mail includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a **named person** is available.*

*Proof of service by Registered Mail should include the **original Canada Post Registered Mail receipt containing the date of service, the address of service, and that the address of service was the person's residence at the time of service,** or the landlord's place of conducting business as a landlord at the time of service **as well as a copy of the printed tracking report.***

I find that the landlord did not serve the tenant with the interim decision or notice of reconvened hearing, as required by section 89 of the *Act* and Rule 3.1 of the *RTB Rules*. The landlord was guessing about the service date and did not provide a valid registered mail tracking number to confirm service, during this hearing. The tenant did not attend this hearing to confirm service of the above documents.

The landlord's two agents were given extra and ample time of 13 minutes during this hearing in order to provide evidence regarding service.

The landlord originally filed the direct request application on November 18, 2021. The interim decision and notice of reconvened hearing are dated December 29, 2021. This hearing occurred on April 1, 2022.

The landlord had ample time from December 29, 2021 until April 1, 2022, a period of over three months, to provide the above information and documentation regarding service of the interim decision and notice of reconvened hearing.

I notified the landlord's two agents that the landlord's application for an order of possession and a monetary order for unpaid rent was dismissed with leave to reapply. I informed them that the landlord's application to recover the \$100.00 filing fee was dismissed without leave to reapply. I notified them that the landlord was at liberty to file a new application and pay a new filing fee, if the landlord wants to pursue this matter in the future. They confirmed their understanding of same.

### Conclusion

The landlord's application to recover the \$100.00 filing fee is dismissed without leave to reapply.

The landlord's application for an order of possession for unpaid rent and a monetary order for unpaid rent of \$2,154.80 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: April 01, 2022

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Residential Tenancy Branch