



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Capilano Heights Restaurant Co  
LTD and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, RP, RR

### Introduction

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

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46;
- an Order for regular repairs, pursuant to section 32; and
- an Order to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 11:10 a.m. in order to enable the landlord to call into this teleconference hearing scheduled for 11:00 a.m. The tenant 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 tenant and I were the only ones who had called into this teleconference.

The tenant was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The tenant testified that he was not recording this dispute resolution hearing.

The tenant confirmed his email address for service of this decision and order.

The tenant testified that he personally served the landlord with a copy of his application for dispute resolution. No proof of service documents were entered into evidence.

Rule 3.5 of the Residential Tenancy Branch Rules of Procedure (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 tenant did not prove, on a balance of probabilities, that the landlord was served with a copy of this application for dispute resolution in accordance with section 89 of the *Act* because the landlord did not attend the hearing and the tenant did not provide any proof of service documents. I find that the tenant has not satisfied me that the landlord was served, as required by Rule 3.5. I dismiss the tenant’s application for dispute resolution with leave to reapply for failure to prove service.

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

### Conclusion

I dismiss the tenant’s 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: April 08, 2022

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Residential Tenancy Branch