



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

For the Tenant: CNR, FFT  
For the Landlord: MNR-DR, OPR-DR, FFL

### **Introduction**

The Tenant made an Application for Dispute Resolution on January 19, 2022 to dispute the 10-Day Notice to End Tenancy for Unpaid Rent the Landlord issued on January 16, 2022. They also applied for reimbursement of the Application filing fee.

On February 9, 2022 the Landlord made an Application for Dispute Resolution via direct request for an order of possession, and recovery of unpaid rent amounts. They also applied for their Application filing fee. With the Tenant's Application already in place concerning this tenancy, the Landlord's Application was joined to the participatory hearing already set down for the Tenant.

The matter proceeded to a participatory hearing on April 19, 2022, pursuant to s. 74(2) of the *Residential Tenancy Act* (the "Act") on April 19, 2022.

Both the Tenant and the Landlord attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present affirmed testimony during the hearing.

### **Preliminary Matter – Tenant Application**

The Tenant maintained in the hearing they did not receive a Notice of Dispute Resolution from the Residential Tenancy Branch in response to their Application. Details of note on their Application, completed online, are their indicated preference for the Notice of Dispute

Resolution to be emailed to them (indicated by the prompt “Notice Package Preference”), and their email address provided on their Application. After processing the Application, the Residential Tenancy Branch provided the Notice of Dispute Resolution to the Tenant, via email, on January 31, 2022. The completed email record is on file and shows that completed email sent to the Tenant’s email address on January 31, 2022 at 6:05PM. This contained the Notice, Applicant Instructions, Respondent Instructions, and a fact sheet as attachments.

In the hearing I reviewed this email address with the Tenant to ensure communication on my decision would be sent to the correct email address. The Tenant verified the same address as that on file at the Residential Tenancy Branch.

Following this, on March 29, 2022 the Residential Tenancy Branch sent an evidence deadline reminder to the Tenant at the same email address.

The Tenant contacted the Residential Tenancy Branch on April 12, 2022 to inquire on information about the hearing. The branch sent another copy of the Notice to the same email address on that date. The Tenant described this in the hearing.

The *Act* s. 59(3) sets out that an applicant must give a copy of the application within 3 days of making it. Additionally, the *Residential Tenancy Branch Rules of Procedure*, that are crafted to ensure a fair process, specify the documents to be served by an applicant (on this Application, the Tenant) to a respondent (on this Application, the Landlord). These are: the Notice of Dispute Resolution Proceeding provided when applying, the Respondent Instructions for Dispute Resolution; a process fact sheet; and other evidence submitted by the applicant.

The Applicant’s email address was that provided to the Residential Tenancy Branch on their Application. I find it more likely than note that the Tenant received a copy of the Notice via email as was their stated preference. The record at the Residential Tenancy Branch shows this to be the case.

The Tenant did not provide a copy of the Notice –that document that is generated when a person applies for dispute resolution – to the Landlord, either through mail or in person. Records at the Residential Tenancy Branch verify that the Branch sent the Notice to the Tenant electronically on January 31, 2022 at 6:05PM. This included 4 attachments to that email. I verified the Tenant’s email in the hearing, and that is the email address that appears on the record. The message explicitly states that the Tenant must serve the packages to the Landlord no later than February 3, 2022.

The *Act* requires proper service in line with administrative fairness in which a party's legal rights and obligations are challenged. I find the Tenant had Notice delivered to them in due course from the Residential Tenancy Branch, then failed to serve it as the *Act* requires. I dismiss the Tenant's Application for Dispute Resolution for this reason.

#### Preliminary Matter – Landlord Application

The Tenant provided that they could not receive the Landlord's Notice and evidence because the Landlord misspelled their surname on both the registered mail pieces they sent. The Tenant presented that Canada Post would not allow the transaction where the Tenant's own identification did not match to the name on that registered mail. The Landlord acknowledged this error in the hearing.

The mail tracking record shows the pieces were returned by Canada Post to the Landlord as unclaimed. It does not appear the Landlord attempted to rectify this or re-send the same mail to the Tenant once again. Also, the Landlord did not pursue alternate means of service.

The 10-Day Notice issued by the Landlord on January 15, 2022 bears this same error, alternately replacing the 't' with a 'd' in the Tenant's name. The Landlord's Application has the Tenant's name misspelled, and the Application was not amended to correct this error.

The Landlord provided a copy of the tenancy agreement in their evidence, and this bears the Tenant's correct name spelling, having been signed by the Tenant at the outset of this tenancy.

As above, the *Residential Tenancy Branch Rules of Procedure* provide that an applicant must serve the party with the Notice and other evidence *within three days* of the Notice being made available by the Residential Tenancy Branch. Rule 3.5 provides that an applicant must demonstrate that they served the respondent with the Notice and all evidence.

Here, the Landlord acknowledged their error. There was no further attempt by the Landlord at service, and as a result the Tenant did not receive the necessary documents. Particularly on the issue on rent amounts owing, the Tenant has been denied the basic right to know the case presented against them in this administrative tribunal setting.

I conclude the Landlord did not complete service of the Notice of Dispute Resolution and other evidence to the Tenant within the necessary timeline. Because the Landlord did not complete

service of the Notice and their evidence in a method prescribed by the *Act*, I dismiss the Landlord's Application for Dispute Resolution in its entirety, without leave to reapply.

The Landlord's evidence is excluded from consideration because of this service issue. This includes the 10-Day Notice. The onus is on the Landlord here to establish proper grounds to end the tenancy. Without verification of its form and content as per s. 52 of the *Act*, I find the tenancy shall not end because the Landlord has not properly registered that document into evidence. Because the Landlord's Application is dismissed, they are not entitled to recovery of the Application filing fee.

### Conclusion

I dismiss the Tenant's Application for cancellation of the 10-Day Notice, with leave to reapply. This decision does not impact any deadlines as set forth in the *Act*. I dismiss the Tenant's claim for reimbursement of the Application filing, without leave to reapply.

In line with the proper service provisions in this administrative tribunal setting, I dismiss the Landlord's Application for an order of possession and recovery of unpaid rent amounts and 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 s. 9.1(1) of the *Act*.

Dated: April 20, 2022

---

Residential Tenancy Branch