



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, FFT

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated February 28, 2022 ("One Month Notice"), and to recover the \$100.00 cost of their Application filing fee.

The Tenants, E.H. and A.H., an agent for the Tenants, J.H. ("T-Agent"), the Landlord, P.G., and an agent for the Landlord, S.G. ("L-Agent") appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it.

During the hearing the Tenants and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

When reviewing the service of the Notice of Hearing documents and the Parties' respective service of evidence back and forth, the Landlord said he received the Tenants Notice of Hearing documents and evidence; however, he questioned the date on which the Notice of Hearing was served, given the Rules and Act. The Tenants said they served the Landlord with the Notice of Hearing documents by registered mail sent on March 19, 2022; however, they were unable to provide a Canada Post tracking number for proof of service. The Tenants said they served their evidence to the Landlord in person on June 6, 2022.

Rule 3.1 states:

**Rule 3.1** states that the applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the RTB, 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]. .

[underlining emphasis added]

Further, section 90 of the Act states

**When documents are considered to have been received**

**90** A document given or served in accordance with section 88 [*how to give or serve documents generally*] or 89 [*special rules for certain documents*], unless earlier received, is deemed to be received as follows:

- (a) if given or served by mail, on the fifth day after it is mailed;
- (b) if given or served by fax, on the third day after it is faxed;
- (c) if given or served by attaching a copy of the document to a door or other place, on the third day after it is attached;
- (d) if given or served by leaving a copy of the document in a mailbox or mail slot, on the third day after it is left. .

[underlining emphasis added]

RTB records show that we emailed the Notice of Hearing documents to the Tenants on March 16, 2022. Pursuant to *Residential Tenancy Act* Regulation section 44: “A document given or served by email in accordance with section 43, unless earlier received, is deemed to be received on the third day after it is emailed.” Accordingly, the Tenants were deemed to have received the Notice of Hearing package from the RTB on March 19, 2022. Therefore, they had until March 22, 2022, to deliver these documents to the Landlord. pursuant to Rule 3.1.

Further, section 59 (3) of the Act states that

**59** (3) Except for an application referred to in subsection (6), 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**, or within a different period specified by the director.

[emphasis added]

In the hearing, the Tenants said they sent the Notice of Hearing documents to the Landlord by registered mail on March 19, 2022, which means the documents were deemed served to the Landlord five days later, or on March 24, 2022, pursuant to section 90 (a) of the Act. As a result, I find that the Tenants were two days late in serving the Landlord with the Notice of Hearing documents.

Given the above, and as the Landlord questioned the validity of the Tenants' service of documents, I find that the Notice of Hearing documents were not served in compliance with the Act and Rules. As such, I **dismiss the Tenants' Application** wholly without leave to reapply.

#### *Merits of Parties' Positions*

Further, as I deferred consideration of the notice issue until after the hearing, I heard the Parties' respective submissions on the merits of the One Month Notice, I find that the Landlord provided sufficient evidence of two other tenants' complaints about the noise coming from the rental unit of the Tenants before me. The Tenants' son, J.H., stated that he is a "professional power lifter" and that this is very strenuous exercise that he conducts within the rental unit. He acknowledged that he sometimes grunts when he is finished an exercise, as his lifts can get up to 600 or 700 pounds.

The Tenants asserted that the residential property is old and creaky, and that sound transfers easily. As such, I find that they should know that it is important to be as quiet as possible to avoid disturbing other tenants in the residential property. I find that grunting and the dropping/placing of 600+ pound weights on the floor on a regular basis would lead to disturbance to other occupants of the residential property.

The Tenants raised issues of there being "revenge" plots and conspiracies about them; however, I find that without evidence to support such claims, that these statements are irrelevant to my considerations.

Essentially, I find that the Landlord provided sufficient evidence to end the tenancy, pursuant to the One Month Notice. I also find that the One Month Notice is consistent with section 52 of the Act as to form and content. Further, I find that as the Notice of Hearing documents were not served in compliance with the Act and Rules, that the **Tenants' Application is dismissed wholly without leave to reapply.**

I, therefore, award the Landlord with an Order of Possession, and as the effective vacancy date had passed, I find that the Tenants are overholding in the residential property and that the **Order of Possession is effective two days** after actual or deemed service to the Tenants.

### Conclusion

The Tenants are unsuccessful in their Application to cancel the One Month Notice, as they failed to serve the Landlord with the Notice of Hearing documents in compliance with the Act and Rules. Further, the Landlord provided sufficient evidence to establish the validity of the One Month Notice. As such, the Tenants' Application is cancelled wholly without leave to reapply.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenants. The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: June 27, 2022

---

Residential Tenancy Branch