



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      OLC, RP, RR, LAT

### **Introduction**

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

- an order that the landlords make repairs to the rental unit pursuant to section 32;
- an order requiring the landlords to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to allow the tenants to reduce rent for repairs, services or facilities
- authorization to change the locks to the rental unit pursuant to section 70;

The tenant attended the hearing. The landlords were represented at the hearing by the Property Manager (MD). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

### **Preliminary Issue: Service of Documents**

The tenant testified that he sent the Notice of Dispute without supporting evidence to the landlord by registered mail. The Canada Post tracking number confirming this mailing is reproduced on the cover of this decision. He was uncertain of the date the registered mail was sent or the address to which it was sent. He did not have the receipt from Canada Post or a picture of the registered mail with the address available at the time of the hearing.

The tenant uploaded 29 jpg documents on August 27, 2022. These photos were not made available to the landlord prior to the hearing. The tenant also testified that although repairs were being undertaken, he was not convinced the repairs were being done well and he was not prepared with that evidence.

The Property Manager stated that the Notice of Dispute, sent by registered mail, was sent to the wrong post office box, which resulted in a delay in receipt of the Notice. The Property Manager stated no evidence accompanied the Notice.

The Property Manager stated that she uploaded her documentary evidence late on August 29, 2022 rather than earlier because she understood that the issues were

resolved and the dispute withdrawn. She was surprised to learn the hearing was proceeding. The uploaded evidence was not provided to the applicant.

Residential Tenancy Policy Guideline #12 “Service Provisions” states in part:

The purpose of serving documents under the legislation is to notify the parties named in the dispute of matters relating to the Legislation, the tenancy agreement, a dispute resolution proceeding, or a review. Another purpose of providing the documents is to allow the other party to prepare their response for the hearing and gather documents they may need to serve and submit as evidence in support of their position.

Rule 2.5, “Documents that must be submitted with an Application for Dispute Resolution” in the Residential Tenancy Branch Rules of Procedure requires applicants to file copies of all documentary and digital evidence to be relied upon at the hearing when they make their application. That did not occur here. In this case the evidence was uploaded to the RTB three (3) days prior to the hearing and not provided to the landlord.

Rule 3.14, “Evidence not submitted at the time of Application for Dispute Resolution” reads:

Except for evidence related to an expedited hearing (see Rule 10), documentary and digital evidence that is intended to be relied on at the hearing **must** be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.

Rule 3.15, “Respondent’s evidence provided in single package” reads:

Where possible, copies of all of the respondent’s available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent’s evidence should be served on the other party in a single complete package.

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to rule 3.17, the respondent’s evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

Further, both the applicant and respondent **must** provide proof of service to the RTB.

I am not satisfied, based on the evidence provided, that either the landlord or the tenant served their evidence in accordance with law and policy. I find the tenant could not provide clear and consistent testimony about what was served when. The registered letter was sent to the wrong post office box number. The testimony from the Property Management company suggested that only the hearing package for the file was served on the landlord and this was confirmed by the tenant.

Given the above, I dismiss this file with leave to re-apply. If the tenant decides to re-apply, it is imperative that he follow the protocols as outlined above.

### **Conclusion**

As I am not satisfied that the evidence to be relied on at the hearing by both the tenant and landlord at this hearing complied with the Act, 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: August 30, 2022

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Residential Tenancy Branch