



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Rancho Management Services (B.C.)  
Ltd and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR-DR

### Introduction

This hearing was reconvened following a review consideration issued on May 2, 2022. In the review consideration decision, the arbitrator determined that issue of whether the landlord successfully served the tenant BV with the Notice of Dispute Resolution Proceedings materials for the original hearing scheduled for March 25, 2022. The original decision and orders were suspended pending this hearing before me, the original arbitrator.

The tenant BV attended the hearing, and the landlords were represented at the hearing by property manager, JR ("landlord"). The landlord acknowledged being served with the Review Consideration Decision, the tenant's Current address for service and the Notice of Dispute Resolution Proceedings for today's hearing. The tenant acknowledged being served with the evidence package for the original hearing.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

### Issue(s) to be Decided

Did the landlord serve the tenant BV with the Notice of Dispute Resolution Proceedings in accordance with section 89 of the Act?

### Background and Evidence

The landlord gave the following testimony. He sent the Notice of Dispute Resolution Proceedings dated December 29, 2021 to the tenant BV and the other named tenant TV via registered mail at the rental unit on December 31, 2021. The landlord testified that each of the two tenants were provided with their own package and provided the two tracking numbers for the mailings which are recorded on the cover page of this decision. The tracking number receipts do not indicate which tracking number corresponds to which addressee. The landlord did not check the Canada Post website to determine whether the registered mailings were picked up.

The landlord acknowledges receiving an email dated June 16, 2021 from the tenant BV advising the landlord that the tenant BV would be moving out of the rental unit on July 1, 2021. According to the email correspondence, provided as evidence by the tenant, the tenant TV would remain living in the rental unit with their children alone.

The landlord testified that he spoke to the owner and told the owners that BV wanted to be removed from the lease. The landlord testified that the owners didn't want him removed from the lease. The landlord testified the reasoning was because of TV's credit references and employment status. At the hearing, the landlord did not recall whether he informed BV of the decision to not release him from the lease, saying he may have done so in phone calls. He doesn't have any emails to show he told BV or TV the landlords' eventual decision. The landlord testified that he sent BV an application and didn't hear anything further from the tenant BV until after the March 25<sup>th</sup> hearing.

The tenant BV testified that he was not served with the Notice of Dispute Resolution Proceedings for the March 25<sup>th</sup> hearing. The tenant read out the contents of the June 16<sup>th</sup> email where he advises the landlord's property manager (attending this hearing as landlord) that he is separating from TV, moving out July 1<sup>st</sup>, and asks the landlord for confirmation of receipt. The tenant testified he got a response on June 21<sup>st</sup> from the landlord asking him to fill out an updated application for the house. It is addressed to BV with his ex-partner TV sent a carbon copy.

BV argues that the landlord was well aware he didn't live in the rental unit anymore. The landlord's agent, the property manager, could have communicated with him via email but didn't do so. The property manager could have asked BV for a forwarding address but didn't. If any registered mail was sent to BV at his former residence, it's possible his ex-spouse could have signed for it; however it's unknown since she never told BV about the proceedings.

### Analysis

An application for dispute resolution is a document that is governed by section 89(1) of the *Act*. (reproduced below).

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*].

Rule 3.5 of the Residential Tenancy Branch Rules of Procedure say the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that the respondent was served with the Notice of Dispute Resolution Proceedings Package and all evidence as required by the *Act*.

Here, the landlord did not dispute receiving the email sent on June 16, 2021, saying that both the tenant BV and his former partner TV wanted BV removed from the lease and that BV would no longer be living in the rental unit after July 1, 2021. The landlord testified that the email prompted him to consult with the owners of the rental unit who eventually decided they would not let BV go from the lease. Here, I point out Policy Guideline PG-13 [Rights and Responsibilities of Co-tenants] which states at Part E:

#### *E. ENDING A TENANCY*

*A tenant can end a tenancy by giving the landlord a written notice. A tenancy may also end if the landlord and any tenant or co-tenant mutually agree in writing to end the tenancy. When a tenancy ends in these circumstances, the notice or agreement to end the tenancy applies to all co-tenants.*

...

*Co-tenants wishing to remain in the rental unit after a notice to end the tenancy has been given should discuss the situation with the landlord. If the landlord agrees to the tenant staying, the landlord and tenant must enter into a new written tenancy agreement.*

*If a tenant remains in the rental unit and continue paying rent after the date the notice took effect, the landlord and tenant may have implicitly entered*

*into a new tenancy agreement. The tenant who moved out is not responsible for this new agreement.*

In this case, the landlord did not request a further written notice to end the tenancy beyond the June 16<sup>th</sup> email. I find the landlord accepted that email as sufficient notice that the tenant BV would end the tenancy with the landlord effective July 1, 2021. The landlord could have asked the tenant BV for a forwarding address for the purposes of potentially filing an application for dispute resolution against him but did not do so. I find that the tenant TV and the landlord implicitly entered into a new tenancy agreement from July 1<sup>st</sup> onward, due to the fact that the landlord continued to accept rent from her up until the time she stopped paying the rent.

The landlord testified he sent BV the Notice of Dispute Resolution Proceedings package (which includes the application for dispute resolution) via registered mail to BV's previous residence, the rental unit that was solely occupied by TV as of the date of mailing. Given the landlord's acknowledgement that he was aware that BV was no longer residing at the rental unit, I find that sending the Application for Dispute Resolution Proceedings to BV at his former residence does not comply with section 89(1)(c) of the Act: by sending a copy by registered mail to **the address at which the person resides**. Consequently, I find BV was not served with the application for dispute resolution.

PG-12 [Service Provisions] states:

*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.*

*Important: all parties named on an application for dispute resolution must receive notice of the proceedings. Where more than one party is named on an application, each party must be served separately. Failure to serve documents in a way recognized by the Legislation may result in the hearing being adjourned, dismissed with leave to reapply, or dismissed without leave to reapply.*

As BV was not served with the application for dispute resolution, I dismiss, without leave to reapply, the application seeking a monetary order for unpaid rent against BV. The original decision and monetary order are varied by removing BV as a debtor. A copy of the varied decision and order are provided with this decision.

### Conclusion

The original decision dated March 25, 2022 against the tenant TV is varied.

The monetary order dated March 25, 2022 is varied to remove the tenant BV as a debtor.

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 22, 2022

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Residential Tenancy Branch