



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL, OPR-DR, MNR-DR**

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the *Residential Tenancy Act* (the “Act”) for an order of possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) issued on March 31, 2022, for a monetary order for unpaid rent, and to recover the cost of the filing fee.

The landlord attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord stated that they did not serve the tenant. The landlord stated they were not informed to serve the tenant and that never received any package to give to the tenant. The landlord stated they only received their package. The landlord stated they assumed the tenant received the same package they received from the Residential Tenancy Branch. I have reviewed the digital email sent to the landlord on September 6, 2022, with the attachments. The instructions within the email read in part as follows:

This message contains important information on how to prepare your Notice package, how to serve your Notice package(s), and how to submit evidence for your claim.

Prepare Your Notice of Dispute Resolution Proceeding Package

You must serve **separate** Notice of Dispute Resolution Proceeding packages to PM [name of tenant removed and initials inserted] within three calendar days, or no later than **Sep 9, 2022**.

The Notice of Dispute Resolution Proceeding package must include:

1. Notice of Dispute Resolution Proceeding
2. All evidence submitted with this application
3. Respondent Instructions for Dispute Resolution
4. The Dispute Resolution Process RTB-114 fact sheet

Serve Your Notice of Dispute Resolution Proceeding Package to the Respondent(s)

You **must** serve the Notice of Dispute Resolution Proceeding package in one of the following ways and then provide your associated proof of service to the Residential Tenancy Branch via the [Dispute Access site](#) using your dispute access code: [code removed] or by submitting these documents at the Residential Tenancy Branch or at any Service BC Centre.

Canada Post Registered Mail

1. Prepare an envelope for each respondent
2. Include 1 copy of the Notice of Dispute Resolution package in each envelope
3. Send the package(s) by Canada Post Registered Mail - Package(s) must be post marked on or before **Sep 9, 2022**
4. Provide the registered mail receipt(s) and tracking information to the Residential Tenancy Branch

In person

1. Print a Notice of Dispute Resolution package for each respondent
2. Serve each respondent by hand on or before **Sep 9, 2022**
3. Complete a Proof of Service form (RTB-9) and provide it to the Residential Tenancy Branch

Email Service

You may serve the Notice Package by email only when the other party has provided in writing an email address and agreement to accept documents related to your tenancy by email. You can use the [Address for Service](#) (RTB-51) form to prove that the other party agreed to receive documents by email. If the other party has not agreed to email service, you can [apply online for substituted service](#) using your dispute access code: [code removed] or submit a [paper application](#) to the Residential Tenancy Branch.

1. Prepare an Email to be sent to each respondent

2. Attach a copy of the Notice of Dispute Resolution package to each email and send the email on or before **Sep 9, 2022**
3. Provide proof that you have an agreement with the other party to serve documents by email

Learn more about [serving your Notice of Dispute Resolution Proceeding package](#)

In this case, the landlord received the hearing package and instructions from the Residential Tenancy Branch, sent on September 6, 2022, the details within the email gave the landlord instructions to serve the respondent and by what methods could be used. I find I have no option except to dismiss the landlord's application with leave to reapply due to lack of service.

I note the landlord was upset that I would not proceed in the absence of the respondent and indicated it was annoying and unfair. However, it would be highly prejudicial to the respondent, contrary to section 89 of the Act, and against the principles of natural justice to proceed with a hearing where the other party was not served.

I also note the landlord referred to a prior hearing claiming they were not served and when they filed for their application for review consideration their application was dismissed because the Arbitrator was a "white racist male". I found the landlord's comments to be unreasonable, unfounded and highly inappropriate. I found it appropriate to conclude the hearing as the hearing could not proceed due to lack of service. I have written the file number of this previous hearing on the covering page of the decision, and I reviewed the prior decision after the hearing.

At the previous hearing the Arbitrator cancelled the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued on March 31, 2022, which is the same notice to end tenancy before me. Even, if the landlord did serve their application on the tenant, which they did not, I would not have granted an order of possession to the landlord based on that Notice, as it has been already cancelled and has no force or effect.

Although I have granted the landlord leave to reapply; however, I was not informed by the landlord at the time that the Notice, subject to this hearing had been cancelled. This means the landlord cannot reapply for an order of possession based on the Notice for unpaid rent issued on the March 31, 2022, as a decision had already been made.

If the tenant has failed to pay rent and rent is still owing the landlord is entitled to issue a new 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, if a subsequent notice to end tenancy dated after March 31, 2022, has not already been issued.

I also note the landlord filed a One Month Notice to End Tenancy for Cause, dated March 31, 2022, as evidence. This was not a dispute listed in the landlord's application and even if it was, I could not consider, as the respondent was not served with the required hearing documents. If the One Month Notice to End Tenancy for Cause was not disputed by the tenant, and no decision had been made then the landlord is entitled to make an application for an order of possession based on this notice to end tenancy.

Conclusion

The landlord's application is dismissed with leave to reapply due to lack of service on the respondent.

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: October 10, 2022

Residential Tenancy Branch