



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 0728144 BC LTD  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      OPR-DR, MNR-DR, FF

### Introduction

This hearing convened as a result of the landlord's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for:

- an order of possession of the rental unit pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued to the tenant;
- a monetary order for unpaid rent; and
- recovery of the cost of the filing fee.

This dispute began as an application via the ex-parte Direct Request process and was adjourned to a participatory hearing based on the Interim Decision by an adjudicator with the Residential Tenancy Branch (RTB), dated August 10, 2022, which should be read in conjunction with this decision.

At the participatory hearing, the landlord and the landlord's son/agent (agent) attended the teleconference hearing. The tenant did not attend the hearing. For this reason, service of the Application for Dispute Resolution, evidence, and Notice of Hearing (application package), application and documentary evidence was considered.

The agent said that the tenant was served the application package by registered mail. When asked the Canada Post registered mail tracking number, the agent provided the tracking number used for the Notice of Dispute Resolution Proceeding-Direct Request registered mail.

The agent did not appear to be aware that they were required to serve the application package with the notice for **this participatory hearing** to the tenant and no tracking number was provided for any other registered mail.

### Analysis and Conclusion

In the Interim Decision, the adjudicator wrote the following:

**Notices of Reconvened Hearing are enclosed with this interim decision. The applicant must serve the Notice of Reconvened Hearing, the interim decision, and all other required documents, upon the tenant within three (3) days of receiving this decision in accordance with section 89 of the Act.**

Section 89 of the Act requires that the landlord's application for dispute resolution, which includes the notice of hearing, must be given in certain ways. In this case, I find the landlord submitted insufficient evidence that they served the tenant with their application and notice of hearing and other required documents. As a result, due to their insufficient evidence, I find the landlord failed to comply with their service requirements of section 89 of the Act.

Both parties have a right to a fair hearing and the tenant would not be aware of the hearing without having been served the notice of a dispute resolution reconvened hearing and application as required by the Act.

I therefore **dismiss** the landlord's application, with leave to reapply.

As I have not considered the merits of the landlord's application, I **dismiss** their request to recover the cost of the filing fee, without leave to reapply.

Leave to reapply does not extend any applicable time limitation deadlines.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: December 15, 2022

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Residential Tenancy Branch