



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Locarno Legacy Corporation and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ARI-C

### Introduction

This hearing was reconvened after the issuance of an interim decision made on August 9, 2022. The purpose of the preliminary hearing heard on August 9<sup>th</sup> was to make procedural orders to ensure that the adjudicative hearing of December 16<sup>th</sup> would proceed smoothly and would conclude within its allotted time.

### Preliminary Issue

None of the tenants attended the hearing although I left the teleconference connection open throughout the hearing which commenced at 11:00 a.m. and ended at approximately 11:20 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord was represented at the hearing by property manager, AH (the “landlord”). The landlord testified that he believes the previous property manager who attended at the preliminary hearing on August 9<sup>th</sup> served the tenants with the Notice of Dispute Resolution Proceedings via email on August 11<sup>th</sup>, although he does not have any proof of service before him for this hearing. The landlord testified that he just found out about today’s hearing on Monday, December 12<sup>th</sup> and that he understood proof of service had to be submitted to the Residential Tenancy Branch within 14 days before the hearing. He is unaware of whether any of the tenants provided the landlord an email address for service of documents related to the tenancy. The landlord later acknowledged that he only assumed the previous property manager served the Notice of Dispute Resolution Proceedings upon the tenants via email.

The Residential Tenancy Branch Rules of Procedure states:

### **3.1 Documents that must be served with the Notice of Dispute Resolution Proceeding Package**

The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, 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].

### **3.5 Proof of service required at the dispute resolution hearing**

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

The Residential Tenancy Branch Policy Guideline PG-12 provides guidance regarding service of document provisions in the *Act*. (Excerpt reprinted below)

#### **PROOF OF SERVICE**

Where the respondent does not appear at a dispute resolution hearing, the applicant must be prepared to prove service of the notice of hearing package. Proof of service of other documents may be submitted in support of claims for dispute resolution in accordance with the Rules of Procedure.

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Proof of service by Registered Mail should include the original Canada Post Registered Mail receipt containing the date of service, the address of service, and that the address of service was the person's residence at the time of service, or the landlord's place of conducting business as a landlord at the time of service as well as a copy of the printed tracking report. Failure to prove service may result in the matter being dismissed, with or without leave to reapply. Adjournments to prove service are given only in unusual circumstances.

In my interim decision, I made the following orders:

*I order that the landlord must serve each tenant with their respective copy the notice of dispute resolution hearing together with a copy this interim decision within three days of receiving the notice of dispute resolution hearing from the Residential Tenancy Branch.*

*The landlord may serve the tenants with all required documents, including any evidence they intend to rely upon for the adjudicative hearing, in person, by registered mail, or by posting them to the door of the rental units. Additionally, at the hearing, tenants AR and MW consented to be served by email at their respective email addresses as recorded on the Notices of Prehearing Conference.*

*If the landlord posts the documents to the door, the landlord must provide the RTB with proof of such service (either by way of an affidavit of service or by completed proof of service forms available on the RTB website).*

The principles of natural justice and procedural fairness require that each of the tenant/respondents have been put on sufficient notice of the claim against them; ensure that they have had adequate time and opportunity to respond to the application; and to make the arrangements to nominate someone to speak on their behalf at today's hearing. Based on the landlord's lack of evidence regarding service, I am not satisfied that each respondent/tenant was properly served with the documents within 3 days, as set out in both my interim order and Rule 3.1 of the Residential Tenancy Branch Rules of Procedure.

Further, explicit directions regarding serving the tenants and providing proof of service was given to the landlord's representative at the preliminary hearing. I find the landlord had sufficient opportunity between the date of that decision and today's hearing to comply with my orders regarding service and failed to do so. Consequently, I dismiss the landlord's application without leave to reapply.

#### Conclusion

The application is dismissed without 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: December 18, 2022

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Residential Tenancy Branch