



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, FFL

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord August 31, 2022 (the “Application”). The Landlord applied as follows:

- For an Order of Possession based on a One Month Notice to End Tenancy for Cause dated August 12, 2022 (the “Notice”)
- For reimbursement for the filing fee

The Agent for the Landlord and the Tenant appeared at the hearing. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Tenant testified that they received the hearing package for this matter from the RTB and confirmed they were aware of the hearing as of September 22, 2022. RTB notes show the Tenant was sent the Notice of Dispute Resolution Proceeding and Respondent Instructions on October 13, 2022. The Tenant testified that they did not receive the Landlord’s evidence.

The Agent testified that the hearing package and Landlord’s evidence were served on the Tenant by registered mail on December 21, 2022, and provided Tracking Number 925 for this. However, the Landlord submitted a Case Overview showing the “dispute

package” was sent to the Tenant September 15, 2022, by registered mail and that Tracking Number 321 relates to this. The Landlord also submitted the Notice of Dispute Resolution Proceeding followed by registered mail receipts and Canada Post tracking information in relation to Tracking Number 321. The tracking information shows the package was sent September 15, 2022, and unclaimed after notice cards were left September 20 and 26, 2022. Further, the Application includes a document called “registered\_mail\_proof\_of\_service\_of\_notice\_of\_dispute.JPG” with the description “registered mail proof of service of notice of dispute - registered mail proof of service of notice of dispute”, which is a photo of the registered mail receipts with Tracking Number 321 on them.

Based on the Case Overview, documentary evidence of service and statements on the Application, I find the hearing package and Landlord’s evidence were sent to the Tenant September 15, 2022, by registered mail, with Tracking Number 321. I find this is clear from the documentary evidence before me. Given this, I find the Tenant was served with the hearing package and Landlord’s evidence in accordance with sections 88(c) and 89(2)(b) of the *Residential Tenancy Act* (the “Act”). The Canada Post tracking information shows notice cards were left for this package September 20 and 26, 2022, and I accept this because there is no compelling evidence to the contrary. The Tenant cannot delay or avoid service by failing to pick up registered mail. The Tenant is deemed to have received the hearing package and Landlord’s evidence September 20, 2022, pursuant to section 90(a) of the *Act*. The Tenant has not provided any compelling evidence to rebut the deeming provision. I also find the Landlord complied with rule 3.1 of the Rules in relation to the timing of service.

The Agent testified that they did not receive the Tenant’s evidence. The Tenant advised they did not know they had to serve their evidence on the Landlord. I note that the Respondent Instructions sent to the Tenant by the RTB on October 13, 2022, would have outlined service requirements for the Tenant.

I find the Tenant failed to comply with rule 3.15 of the Rules in relation to serving their evidence on the Landlord. Pursuant to rule 3.17 of the Rules, I exclude the Tenant’s evidence because I find it would be unfair to consider it when it was not served on the Landlord and the Agent could not address it at the hearing.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all admissible evidence provided. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on the Notice?
2. Is the Landlord entitled to reimbursement for the filing fee?

### Background and Evidence

A written tenancy agreement was submitted. The tenancy started February 01, 2021. Rent is due on the first day of each month.

The Notice was submitted. The effective date of the Notice was September 30, 2022. The copy of the Notice submitted is not signed; however, the Agent testified that the copy served on the Tenant was signed. The ground for the Notice is repeated late payment of rent.

The Case Overview states that the Notice was sent to the Tenant August 12, 2022, by registered mail with Tracking Number 835. The Landlord submitted the registered mail receipts for this showing the package was sent August 12, 2022. The Landlord submitted the Canada Post tracking information for Tracking Number 835 showing the package was sent August 12, 2022, and delivered September 06, 2022. I looked Tracking Number 835 up on the Canada Post website to see who the package was delivered to. In order to obtain the delivery confirmation, you must enter the postal code and I did enter the postal code of the rental unit. The delivery confirmation shows the package was delivered to "A.R".

The Tenant testified that the rental unit is a condo, they do not have roommates and the rental unit address only relates to them and their unit, no others. The Tenant submitted that the Canada Post tracking information and delivery confirmation is wrong; however, the Tenant could not point to evidence to support this.

The Tenant acknowledged they did not file a dispute of the Notice with the RTB.

## Analysis

The Notice was issued pursuant to section 47 of the *Act*.

Based on the evidence from the Landlord, including the testimony of the Agent, Case Overview, registered mail receipts, Canada Post tracking information and the Canada Post delivery confirmation, I find the Tenant was served with the Notice in accordance with section 88(c) of the *Act*. Based on the same evidence, I find the Notice was sent to the Tenant August 12, 2022. The Canada Post tracking information shows attempted delivery and a notice card left August 16, 2022. Pursuant to section 90(a) of the *Act*, the Tenant is deemed to have received the Notice August 17, 2022, because the Tenant cannot delay service by failing to accept or pick up registered mail when a notice card is left. I accept that a notice card was left for the Tenant because the Canada Post website shows this, and the Tenant has not submitted any compelling evidence to contradict this. Further, the Tenant has not provided any compelling evidence to rebut the deeming provision. I also note that the Notice was delivered to A.R. on behalf of the Tenant September 06, 2022.

Pursuant to section 47(4) of the *Act*, the Tenant had ten days from August 17, 2022, to dispute the Notice by filing a dispute with the RTB. The Tenant did not dispute the Notice as acknowledged by the Tenant.

Given the Tenant did not dispute the Notice, section 47(5) of the *Act* applies, and the Tenant is conclusively presumed to have accepted the Notice and had to vacate the rental unit by September 30, 2022, the effective date of the Notice.

I accept that the Notice served on the Tenant was signed because the Tenant did not dispute this and did not provide a copy of the Notice received by A.R. I have reviewed the Notice and find it complies with section 52 of the *Act* in form and content as required by section 47(3) of the *Act*.

The Landlord is entitled to an Order of Possession pursuant to section 55(2) of the *Act* and is issued an Order of Possession effective two days after service on the Tenant.

Given the Landlord has been successful in the Application, the Landlord is entitled to reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act* and is issued a Monetary Order in this amount.

Conclusion

The Landlord is issued an Order of Possession effective two days after service on the Tenant. This Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Supreme Court and enforced as an order of that Court.

The Landlord is issued a Monetary Order for \$100.00. This Order must be served on the Tenant and, if the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: January 25, 2023

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Residential Tenancy Branch