



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

Tenant: CNC, FFT  
Landlord: OPC, FFL

### **Introduction**

On August 3, 2022, the Tenant filed their Application at the Residential Tenancy Branch to dispute the One-Month Notice to End Tenancy for Cause (the “One-Month Notice”), and for reimbursement of the Application filing fee.

The Landlord filed an Application, joined to the Tenant’s initial Application, on August 24, 2022, for an Order of Possession in line with the One-Month Notice, and reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on January 5, 2023. Both parties attended the teleconference hearing.

### **Preliminary Matter – Tenant’s service of Notice of Dispute Resolution Proceeding and evidence**

The *Act* s. 89(1) sets out the means of service for an application for dispute resolution, when one party makes the Application at the Residential Tenancy Branch and must inform the other party. This is either leaving a copy with the person/landlord’s agent, or by registered mail.

Further, the *Residential Tenancy Branch Rules of Procedure* sets out the rules for parties’ submission and provision of evidence to the Branch and each other. This sets timelines for doing so.

The parties share a mailbox at the rental unit property, where the Landlord lives in one building structure on the property, and the Tenant another. The Tenant stated in the hearing that they left the Notice of Dispute Resolution Proceeding in the mailbox for the Landlord to find. The Landlord stated they did not receive evidence from the Tenant for this hearing. The Tenant provided evidence to the Residential Tenancy Branch in advance for this hearing.

I find the Tenant did not serve the Notice of Dispute Resolution Proceeding to the Landlord in a verifiable manner as per the *Act*. The Tenant did not specify that they served the Notice of Dispute Resolution Proceeding to the Landlord within 3 days of receiving it from the Residential Tenancy Branch; this is required as per Rule 3.1, and s. 59(3) of the *Act*. The Landlord did not verify receiving this document within 3 days as required. Further, I find as fact that the Tenant did not provide evidence to the Landlord as required. This is ultimately prejudicial to the Landlord.

For these reasons, I dismiss the Tenant's Application in its entirety, with leave to reapply. There is no compensation for the Application filing fee.

#### **Preliminary Matter – Landlord's service of Notice of Dispute Resolution Proceeding and evidence**

The *Act* s. 89(2) is more specific on service from a landlord who is seeking an order of possession: this is leaving a copy of the Notice of Dispute Resolution Proceeding with the tenant, by registered mail, or attaching a copy to the door at the rental unit.

With respect to evidence, Rule 3.3 specifies that evidence supporting an application must be received by the other party "not less than 14 days before the hearing."

The Landlord stated that they also utilized the shared mailbox on the property for the purpose of serving the Tenant with the Notice of Dispute Resolution Proceeding.

The Tenant stated they did not receive the Landlord's Notice of Dispute Resolution Proceeding. Also, they received evidence from the Landlord two days prior to the hearing date of January 5, 2023.

The Landlord did not provide proof of their service to the Tenant, and again I cannot establish as fact that the Landlord completed service in a timely manner. The Landlord did not serve in a verified method as per s. 89 of the *Act*. I find the Tenant was not served with the Notice of Dispute Resolution Proceeding from the Landlord as required.

I dismiss the Landlord's Application accordingly. There is no compensation for the Application filing fee.

### **Conclusion**

Neither party completed service in a verifiable manner for this dispute resolution proceeding. I dismiss both parties' Applications.

There is no evidence in place for this proceeding; therefore, there is no record of any notice to end tenancy that was the pretext for the Tenant applying to the Residential Tenancy Branch. With no documented proof of such a notice in place, I order the cancellation of any such document in existence. As indicated by the Tenant on their Application, the notice in question was delivered on July 28, 2022. The matter of the Landlord seeking to end the tenancy is concluded, with no Order of Possession granted, and the tenancy shall continue.

As above, I dismiss the Tenant's Application for cancellation of the One-Month Notice, with leave to reapply, and no reimbursement of the Application filing fee.

As above, I dismiss the Landlord's Application for an order of possession, with leave to reapply, and no reimbursement of the Application filing fee.

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

Dated: January 20, 2023

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Residential Tenancy Branch