



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      ET, FFL

### Introduction and Preliminary Matter

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. On January 11, 2023, the landlord applied for:

- an early termination of the tenancy; and
- the filing fee.

The hearing was attended by the landlord, but not the tenants. The landlord was affirmed and made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The Notice of Dispute Resolution Proceeding (NDRP) was made available to the landlord on January 13, 2023.

Rule 10.3 states:

#### **10.3 Serving the notice of dispute resolution proceeding package**

The applicant must, **within one day** 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:

- the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- the Respondent Instructions for Dispute Resolution;
- an Order of the director respecting service;
- the Expedited Dispute Resolution Process Fact Sheet (RTB-114E) provided by the Residential Tenancy Branch; and
- evidence submitted to the Residential Tenancy Branch online or in person, or through a Service BC Office with the Application for Dispute Resolution, in

accordance with Rule 10.2 [Applicant's Evidence Relating to an Expedited Hearing].

[emphasis added]

The landlord testified that they served the Notice of Dispute Resolution Proceeding (NDRP) and their evidence on the tenants by text message and email on January 14, 2023, and by registered mail on January 16, 2023.

Text message is not a method of service recognized by the Act.

Rule 10.9 states that an applicant must provide proof of service by submitting a RTB 9 *Proof of Service – Notice of a Dispute Resolution* form one day after serving the NDRP and at least two days before the hearing; failure to do this may result in the application being dismissed or the hearing being rescheduled or adjourned to a later date.

As the landlord did not submit proof of service, I permitted him to do so by 4:30 pm on the day of the hearing.

The landlord submitted two tracking numbers, as noted on the cover page of the decision, and screenshots of text messages with an occupant of the unit.

A January 15 text appears to indicate the tenants did not receive the NDRP package.

The first tracking number references an item received by Canada Post on January 23, 2022, 10 days after the NDRP was made available to the landlord. Pursuant to section 90 of the Act, I deem the package received by the tenants on January 28, 2023.

The second tracking number appears to be for an item other than the NDRP; it references an item that arrived at Canada Customs on January 7, 2023.

The landlord did not submit an RTB-51 *Address for Service* form, demonstrating that the tenants accepted service by email, and the landlord did not submit proof that the parties had recently communicated by email.

As I find the landlord has failed to prove he served the tenants in accordance with section 89 of the Act and Rule 10, I dismiss the landlord's application with leave to reapply.

Conclusion

The landlord's application is dismissed with 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: February 02, 2023

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Residential Tenancy Branch