



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **CNR-MT, CNC-MT, MNRT, MNDCT, DRI-ARI-C, FFT**

**OPR, OPC, MNRL, MNDL, MNDCL, FFL**

### **Introduction**

This hearing dealt with applications filed by both the landlord and the tenant pursuant to the Residential Tenancy Act.

The tenant applied for:

- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities pursuant to sections 46 and 55.
- Leave to have the application heard after the time to dispute the notice to end tenancy has passed pursuant to section 66
- An order to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to sections 47 and 55;
- Leave to have the application heard after the time to dispute the notice to end tenancy has passed pursuant to section 66;
- An order to recover the cost of emergency repairs made by the tenant during the tenancy pursuant to section 33
- A monetary order for damages or compensation pursuant section 67;
- A dispute to an additional rent increase for capital expenditures pursuant to section 23 of the Residential Tenancy Regulations;
- Authorization to recover the filing fee from the other party pursuant to section 72

The landlord applied for:

- An order of possession for unpaid rent pursuant to sections 46 and 55;
- An order of possession for cause pursuant to sections 47 and 55;
- A monetary order for unpaid rent pursuant to sections 26 and 67;
- A monetary order for damages caused by the tenant or the tenant's guests pursuant to sections 7 and 67;
- A monetary order for damages or compensation pursuant to section 67;
- Authorization to recover the filing fee from the other party pursuant to section 72

The tenant did not attend this hearing, although the teleconference connection was left open throughout the hearing which commenced at 11:00 a.m. and ended at 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 attended the hearing. As only the landlord attended, I asked the landlord whether she served the tenant with a copy of her Notice of Dispute Resolution Proceedings. After being sworn in, the landlord testified that she did serve it, however she is unsure by what method. It may have been served personally or via Canada Post. The landlord acknowledges she did not complete or submit a proof of service document into evidence for this hearing. The landlord also acknowledges that she uploaded an amendment into the tenant's file instead of her own. This amendment was not submitted into the Residential Tenancy Branch's Dispute Access site as an amendment.

The landlord testified that the tenant moved out of the rental unit on October 31, 2022.

### Analysis

Rule 7.3 of the Rules of Procedure provides that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application with or without leave to re-apply.

Rule 7.4 states that evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend to present evidence, any written submissions supplied may or may not be considered.

Rule 6.6 states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

The tenant did not attend the hearing which was scheduled by conference call at 11:00 a.m. As he did not attend, he did not present evidence regarding the merits of his claim for me to consider, or satisfy me that on a balance of probabilities, the facts occurred as claimed.

Consequently, I dismiss the tenants' application without leave to reapply. As the tenant has vacated the rental unit on October 31, 2022, I find that the tenant accepted the validity of the Notices to End Tenancy or otherwise agreed to terminate the tenancy and, the tenant's application seeking to cancel the Notices to End Tenancy is dismissed.

on this basis. As the tenant has already moved out of the rental unit, it is not necessary for an order of possession to be granted.

Regarding the landlord's application, section 89 of the Act establishes the following Special Rules for certain documents, which include an application for dispute resolution:

*89(1) An application for dispute resolution,...when required to be given to one party by another, must be given in one of the following ways:*

- a. by leaving a copy with the person;*
- b. if the person is a landlord, by leaving a copy with an agent of the landlord;*
- c. by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- d. if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
- e. as ordered by the director under section 71(1) [director's orders: delivery and service of document]...*
- f. by any other means of service provided for in the regulations.*

The Residential Tenancy Branch Policy Guideline PG-12 provides guidance regarding service of document provisions in the Act. Part 15 of PG-12 speaks specifically to proof of service.

## **15. 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.

Where proof of service is required, the person who actually served the documents must either:

- be available as a witness in the hearing to prove service, or
- provide a signed statement with the details of how the documents were served.

Proof of service personally should include the date and time of service, the location where service occurred, description of what was served, the name of the person who was served, and the name of the person who served the documents.

...

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.

Based on the landlord's lack of evidence regarding service, I am not satisfied that the tenant was properly served with copies of the landlord's notice of hearing and application for dispute resolution. Consequently, I dismiss the landlord's application with leave to reapply.

#### Conclusion

The tenant's application is dismissed without leave to reapply.

The landlord's application is dismissed with leave to reapply. Leave to reapply does not extend any deadlines established pursuant to the Act, including the deadlines for applying for dispute resolution or for returning security deposits at the end of a tenancy.

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 03, 2023

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Residential Tenancy Branch