



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

A matter regarding CASCADIA APARTMENT RENTALS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCL-S, FFL

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act"), for:

- a monetary order of \$700.00 for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit of \$700.00, pursuant to section 38; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The tenant did not attend this hearing. The landlord's agent attended this hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing lasted approximately 11 minutes, from 1:30 p.m. to 1:41 p.m. I monitored the teleconference line throughout this hearing. 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's agent and I were the only people who called into this teleconference.

The landlord's agent confirmed her name and spelling. She provided her email address for me to send this decision to the landlord after the hearing.

The landlord's agent confirmed that she was the building manager, employed by the landlord company ("landlord") named in this application and that she had permission to speak on its behalf. She provided the legal name of the landlord. She said that the landlord owns the rental unit. She provided the rental unit address.

Rule 6.11 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure* (“Rules”) does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, the landlord’s agent affirmed, under oath, that she would not record this hearing.

I explained the hearing process to the landlord’s agent. She had an opportunity to ask questions, which I answered. She did not make any adjournment or accommodation requests.

#### Preliminary Issue – Service of Landlord’s Application

The landlord’s agent stated that the tenant was served with a copy of the landlord’s application for dispute resolution hearing package on June 22, 2022, by way of registered mail to the tenant’s forwarding address, provided by the tenant on May 30, 2022, on the move-out condition inspection report. She provided a Canada Post tracking number verbally during the hearing.

I informed the landlord’s agent that I did not receive any evidence at all from the landlord, at the RTB. I notified her that I did not receive the Canada Post receipt for service, the move-out condition inspection report, the tenancy agreement, or any other documents to support this application. I informed her that no additions, changes, or modifications were made by the landlord on the online RTB dispute access site after the landlord initially filed this application on June 9, 2022. I notified her that the landlord was contacted by the RTB to verify that this hearing was still required, and the landlord emailed back to indicate that it was, on January 12, 2023.

The landlord’s agent stated that documents were submitted by the landlord, but she did not know the date or the evidence submission receipt information from the RTB. She claimed that the above documents are usually submitted by the landlord, unless there are additional tenancy documents in the landlord’s possession. She said that she moved to another room during this hearing, to obtain the assistance of another landlord agent, to look up the document submission information.

The landlord was provided with an application package from the RTB, including instructions regarding the hearing process. The landlord was provided with a document entitled “Notice of Dispute Resolution Proceeding” (“NODRP”) from the RTB, after filing this application. The NODRP contains the phone number and access code to call into this hearing.

The NODRP states the following at the top of page 2, in part (my emphasis added, which I informed the landlord's agent about during this hearing):

**The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent.**

- **It is important to have evidence to support your position with regards to the claim(s) listed on this application. For more information see the Residential Tenancy Branch website on submitting evidence at [www.gov.bc.ca/landlordtenant/submit](http://www.gov.bc.ca/landlordtenant/submit).**
- Residential Tenancy Branch Rules of Procedure apply to the dispute resolution proceeding. View the Rules of Procedure at [www.gov.bc.ca/landlordtenant/rules](http://www.gov.bc.ca/landlordtenant/rules).
- Parties (or agents) must participate in the hearing at the date and time assigned.
- The hearing will continue even if one participant or a representative does not attend.
- A final and binding decision will be sent to each party no later than 30 days after the hearing has concluded.

Section 89(1) of the Act outlines the methods of service for an application for dispute resolution, which reads in part as follows (my emphasis added):

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 documents].*

Residential Tenancy Policy Guideline 12 states the following, in part (my emphasis added):

*Registered mail includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a **named person** is available.*

*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.***

Accordingly, I find that the tenant was not served with the landlord's application, as per section 89 of the Act.

I find that the landlord was unable to provide sufficient documentary evidence of a residential or a forwarding address provided by the tenant, as required by section 89(1) of the Act.

The landlord did not provide a copy of the move-out condition inspection report, as evidence for this hearing, that the landlord's agent said contained the forwarding address provided by the tenant. The landlord did not provide a Canada Post receipt or tracking report with this application, as required by Residential Tenancy Policy Guideline 12. The tenant did not attend this hearing to confirm service of the landlord's application.

The landlord did not submit any documentary evidence at all for this hearing. The landlord's agent was unable to provide a date of submission or any details of same, despite me providing her with additional time during this hearing to look it up.

The landlord's agent asked if she could submit evidence after this hearing, if she found it. I informed her that she could not, as the landlord had ample time prior to this hearing, since the landlord filed this application on June 9, 2022, and this hearing occurred on February 23, 2023, approximately 8.5 months later. I offered her the opportunity to withdraw this application and reapply and she declined to do so.

I notified the landlord's agent that the landlord's application was dismissed with leave to reapply, except for the \$100.00 filing fee. I informed her that the landlord could file a new application, if it wants to pursue this matter in the future. She affirmed her understanding of same.

Conclusion

The landlord's application to recover the \$100.00 filing fee is dismissed without leave to reapply.

The remainder of 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 23, 2023

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Residential Tenancy Branch