



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding GARY REEDER REALTY LTD  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      MNDL-S, FFL

### Introduction

This hearing dealt with the landlord's application, filed on June 21, 2022, pursuant to the *Residential Tenancy Act* ("Act"), for:

- a monetary order for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenant's security deposit, 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 two agents (collectively "landlord's agents"), landlord AR ("landlord's agent") and landlord RB ("owner"), attended this hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing lasted approximately 30 minutes, from 1:30 p.m. to 2:00 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 agents and I were the only people who called into this teleconference.

The landlord's agents confirmed their names and spelling. The landlord's agent provided the legal name and spelling for the tenant. The landlord's agent provided her email address for me to send this decision to the landlord after the hearing.

The landlord's agent confirmed that she was a realtor, employed by the landlord company ("landlord") named in this application. She provided the legal name of the landlord. She said that the landlord was an agent for the owner of the rental unit. She provided the rental unit address. She affirmed that she had permission to speak on

behalf of the landlord and the owner, at this hearing. She identified herself as the primary speaker for the landlord at this hearing and the owner agreed to same.

The owner confirmed that he previously owned the rental unit, and it was sold to new owners in June 2022. He said that he was the owner of the rental unit, during the tenant's tenancy. He affirmed that the landlord's agent was his agent during the tenant's tenancy, and she had permission to represent him at this hearing.

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 agents both separately affirmed, under oath, that they would not record this hearing.

I explained the hearing process to the landlord's agents. I informed them that I could not provide legal advice to them, and they could retain a lawyer for same. They had an opportunity to ask questions, which I answered. They did not make any adjournment or accommodation requests.

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

During this hearing, I provided the landlord's agent with ample and additional time to look up service evidence and information. She said that she had to open an envelope, that was returned to the landlord sender, to determine what documents were served to the tenant. She stated that she had to find the registered mail information, including the Canada Post receipt and tracking number.

The landlord's agent stated that the tenant was not served with a copy of the landlord's notice of dispute resolution proceeding package. She said that she did not receive it from the RTB. She claimed that she only received an email evidence deadline reminder from the RTB on June 23, 2022.

The landlord's agent testified that she served the landlord's evidence package to the tenant on June 23, 2022. She provided a Canada Post tracking number verbally during this hearing. She said it was served to the rental unit, where the tenant was not residing, since he moved out on May 31, 2022. The landlord's agents both stated that the tenant did not provide a forwarding address, he did not sign the move-out condition inspection report, and they had no knowledge of where the tenant was located.

I notified the landlord's agent that, as per the online RTB dispute access site, she was emailed an application package from the RTB, including instructions regarding the

hearing process. I informed her that the landlord was sent a document entitled “Notice of Dispute Resolution Proceeding,” dated July 11, 2022 (“NODRP”) from the RTB, after filing this application. The NODRP contains the phone number and access code to call into this hearing.

The landlord’s agent claimed that she did not receive the NODRP package, and she used the RTB email evidence reminder to obtain the phone number and access code to call into this hearing. I notified her that, as per the online RTB dispute access site, the RTB email with the NODRP package was sent to the landlord’s agent’s email address on July 11, 2022. I informed her that her email address, which was confirmed as correct by her during this hearing, was provided by her when she filed this application and it was used by the RTB, to send the NODRP package with explicit instructions to serve the tenant by July 14, 2022. That email provides instructions regarding service to the tenant, methods of service, and proof of service. I read the email aloud during this hearing, as I located it on the online RTB dispute access site.

The landlord’s agent then claimed that the email company that services her email address, has trouble receiving emails at times and it was outside of her control. Yet, she claimed that she received the email evidence reminder from the RTB, sent to the same email, on June 23, 2022. She confirmed that she did not provide an alternate email address or the owner’s email address, which uses a different service company, to the RTB, for service of documents related to this application.

As per the online RTB dispute access site, the landlord was called by the RTB on February 7, 2023, to verify that this hearing was still required, and the landlord responded that it was. As per the online RTB dispute access site, the landlord called the RTB on March 2, 2023, and asked if the hearing would continue in the tenant’s absence.

Section 59(3) of the *Act* states the following (my emphasis added):

*Starting Proceedings*

*59 (3) Except for an application referred to in subsection (6), **a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.***

Rule 3.1 of the RTB *Rules* states, in part (my emphasis added):

*3.1 Documents that must be served with the Notice of Dispute Resolution Proceeding Package*

**The applicant must, within three days 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:**

- a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;**
- b) the Respondent Instructions for Dispute Resolution;**
- c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and**
- d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].*

The landlord was provided with an application package from the RTB, including instructions regarding the hearing process, on July 11, 2022. The landlord was provided with an NODRP document, dated July 11, 2022, from the RTB, on the same date, 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 agents 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.

The landlord did not serve the tenant with the landlord's NODRP, instructions, fact sheet, or other required application documents, as noted above.

The landlord only served an evidence package to the tenant on June 23, 2022, prior to this hearing being scheduled and prior to the NODRP date of July 11, 2022.

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

The landlord served the tenant at the rental unit, where he was not residing, at the time of evidence service on June 23, 2022. The landlord did not receive a forwarding or residential address from the tenant and did not know where the tenant was located.

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.

I informed the landlord's agents that the landlord filed this application on June 21, 2022, and this hearing occurred on March 14, 2023, almost 9 months later. I informed them that the landlord had ample time to serve the tenant, provide evidence of service, and contact the RTB if there were any missing documents, if they required information, or if they were unsure about the hearing process.

I notified the landlord's agents that the landlord's application was dismissed with leave to reapply, except for the \$100.00 filing fee. I informed them that the landlord could file a new application and pay a new filing fee, if the landlord wants to pursue this matter in the future.

#### Preliminary Issue – Inappropriate Behaviour by Landlord's Agents during this Hearing

Rule 6.10 of the RTB *Rules* states the following:

*6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing*  
*Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.*

During this hearing, the landlord's agents repeatedly interrupted me, spoke at the same time as me, argued with me, repeatedly asked me the same questions, and repeatedly asked me for legal advice.

I repeatedly cautioned the landlord's agents and informed them that I would end this hearing, if they continued with this inappropriate behaviour. This hearing lasted longer because of the repeated interruptions, arguments, and inappropriate behaviour by the landlord's agents. This hearing lasted 30 minutes, in order to provide the landlord's agents with additional time to look up service information, and due to their repeated questions and arguments. I was required to repeatedly read out and explain the same information to them regarding this application and service.

When I verbally provided my decision to dismiss the landlord's application, the landlord's agents became extremely upset and argumentative. They asked for my name, which I provided to them, and informed them that it would be on a copy of this written decision, which would be sent to them after this hearing. They repeatedly asked me the same questions, they repeatedly asked me to explain the same information, and they repeatedly argued with me and interrupted me. They repeatedly asked me for legal advice, which I repeatedly told them I could not provide. They repeatedly argued that they were not asking for legal advice. They spoke at the same time as each other and interrupted each other.

When I asked the landlord's agents to allow me to speak, answer their questions, and stop arguing with me, they repeatedly stated that they were not arguing with me and claimed that I was interrupting them. When I gave them additional time to speak and ask questions, they then claimed that I was not answering their questions. They repeatedly made statements rather than asking questions. They argued about my decision because they disagreed with it.

After repeated arguments and interruptions, I informed the landlord's agents that I was ending this hearing and thanked them for attending. They were still arguing with me, interrupting me, and speaking at the same time as me, while I was informing them of same. I ended the hearing at 2:00 p.m.

### 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: March 16, 2023

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Residential Tenancy Branch