



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

### **Dispute Codes**

Tenant: CNC, OLC  
Tenant: CNR, RR

### **Introduction**

On December 21, 2022, the Tenant filed their Application at the Residential Tenancy Branch:

- a. to dispute the One-Month Notice to End Tenancy for Cause (the “One-Month Notice”);
- b. for the Landlord’s compliance with the legislation and/or tenancy agreement

On January 12, 2023, they submitted a second Application:

- c. to dispute the 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10-Day Notice”);
- d. for a reduction in rent for repairs agreed upon but not provided.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on March 23, 2023. Both parties attended the teleconference hearing.

**Preliminary Matter – Tenant’s service of 1<sup>st</sup> Notice of Dispute Resolution Proceeding and evidence**

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 *Act* sets out acceptable methods for service of documents.

In the hearing, the Tenant stated they provided a copy of the Notice of Dispute Resolution Proceeding, issued by the Residential Tenancy Branch on December 21, 2022, to the Landlord by serving it to the management office. The Tenant did not specify the date of this service. The Landlord confirmed they received this document from the Tenant in person on January 6, 2023.

The *Act* s. 59(3) sets out that an applicant must give a copy of the application within 3 days of making it. Additionally, the *Residential Tenancy Branch Rules of Procedure*, which are crafted to ensure a fair process, specify the documents to be served by an applicant (on this Application, the Landlord) to a respondent (on this Application, the Tenant). These are: the Notice of Dispute Resolution Proceeding provided when applying, the Respondent instructions for Dispute Resolution; a process fact sheet; and evidence submitted by the applicant.

The record of communication at the Residential Tenancy Branch shows the Branch sent the Notice of Dispute Resolution Proceeding to the Tenant on December 21, 2022. This was to the email provided by the Tenant on their Application, an address that I verified with the Tenant at the end of the hearing. This message contains the following instructions:

**Prepare Your Notice of Dispute Resolution Proceeding Package**

You must serve **separate** Notice of Dispute Resolution Proceeding packages to **[the Tenant]** within three calendar days of this email, or no later than **Dec 24, 2022** .

The Notice of Dispute Resolution Proceeding package must include:

1. Notice of Dispute Resolution Proceeding
2. All evidence submitted with this application
3. Respondent Instructions for Dispute Resolution
4. The Dispute Resolution Process RTB-114 fact sheet

**Serve Your Notice of Dispute Resolution Proceeding Package to the Respondent(s)**

You **must** serve the Notice of Dispute Resolution Proceeding package in one of the following ways and then provide your associated proof of service to the Residential Tenancy Branch via the [Dispute Access site](#) using your dispute access code: **[code]**. Or you may submit these documents at the Residential Tenancy Branch or at any Service BC Centre.

**Canada Post Registered Mail**

1. Prepare an envelope for each respondent
2. Include 1 copy of the Notice of Dispute Resolution package in each envelope
3. Send the package(s) by Canada Post Registered Mail - Package(s) must be post marked on or before **Dec 24, 2022**
4. Provide the registered mail receipt(s) and tracking information to the Residential Tenancy Branch

**In person**

1. Print a Notice of Dispute Resolution package for each respondent
2. Serve each respondent by hand on or before **Dec 24, 2022**
3. You must be able to provide proof that you have served in person . . .

**Email Service**

You may serve the Notice Package by email only when the other party has provided in writing an email address and agreement to accept documents related to your tenancy by email. You can use the [Address for Service](#) (RTB-51) form to prove that the other party agreed to receive documents by email. If the other party has not agreed to email service, you can [apply online for substituted service](#) using your dispute access code: [code] or submit a [paper application](#) to the Residential Tenancy Branch.

1. Prepare an Email to be sent to each respondent
2. Attach a copy of the Notice of Dispute Resolution package to each email and send the email on or before **Dec 24, 2022**
3. Provide proof that you have an agreement with the other party to serve documents by email

Learn more about [serving your Notice of Dispute Resolution Proceeding package](#).

The Landlord provided a record of all correspondence they had with the Tenant via email. The Tenant acknowledged service of this evidence to them; therefore, it forms part of the record in this proceeding.

On December 30, the Landlord informed the Tenant: “we have not received any dispute notification from the Residential Tenancy Branch . . .”

To this, the Tenant responded on that same day: “Did you not get the package I left? Be last Thursday or Friday.” [*i.e.*, December 22 or 23].

The Landlord responded again on January 3, 2023:

. . .we have not received any package at the office. Did you drop it off in person? We stamp everything that comes into the office on the date it is received, and there is nothing logged for that property or that time period. Please provide another copy asap.

To this, the Tenant responded: “I dropped it off last week, going on ten days now. I will do it again today. . . you can expect it before 2pm today.”

The Landlord responded to this message to say, “Yes if you could drop off again that would be appreciated.” The Tenant then clarified about having to drop the package off again later that day: “I will probably have to leave it late this evening, is there a secure spot I could leave it tonight?”

The Landlord then informed the Tenant about a drop box at the office. Moreover: “you can otherwise drop off tomorrow, or if you want me to pick up you can leave it for me somewhere on the property.”

I find as fact that the Landlord then received the Notice of Dispute Resolution Proceeding from the Tenant in person on January 6, 2023. This is as stated in the hearing, and based on a balance of probabilities I find the Tenant’s service of the Notice of Dispute Resolution Proceeding to the Landlord was substantially delayed.

From the above record, as it exists within Residential Tenancy Branch and within the Landlord’s evidence of their dialogue with the Tenant directly concerning notification of this hearing, I find the Tenant failed to serve the Notice of Dispute Resolution Proceeding to the Landlord as the *Act* requires. The *Act* requires proper service in line with administrative fairness in which a party’s legal rights and obligations are challenged.

The responsibility is on the Tenant to ensure proper service of the Notice of Dispute Resolution Proceeding is completed within the required time. The Tenant must prove they completed adequate service. The Tenant did not do so here. Within the Landlord’s correspondence is the Tenant’s statement that they took a photo of the

transaction on either December 22 or 23; however, that is not in the record for this hearing. The evidence is clear that the Tenant did not complete proper service of this legal proceeding as required.

I find the Residential Tenancy Branch delivered the Notice document to the Tenant in due course; however, the Tenant failed to serve it as the *Act* requires. For this reason, I dismiss the Tenant's first Application for Dispute Resolution for this reason.

The *Act*, s. 55 provides that I must grant to the Landlord an Order of Possession of the rental unit if I dismiss the Tenant's Application. This is contingent on the document in question – here, the One-Month Notice – complying with the s. 52 requirements for form and content. On my review of the One-Month Notice in the record (images provided by the Landlord for this hearing, evidence that the Tenant acknowledged they received), I find the document complies with s. 52.

I so grant the Landlord an Order of Possession in line with the One-Month Notice, effective two days after they serve it to the Tenant.

Because this tenancy is ending, there will be no further landlord-tenant relationship. I find there is no need for a determination on the Landlord's compliance with the legislation and/or tenancy agreement. Similarly, I decline to analyze the issue of pending repairs and whether the Tenant is entitled to a reduction in rent.

Additionally, the tenancy is ending in line with the One-Month Notice. I dismiss the Tenant's Application for cancellation of the 10-Day Notice for this reason, and give no consideration to those issues.

## **Conclusion**

I dismiss the Tenant's first Application for cancellation of the One-Month Notice, without leave to reapply.

For the reasons above, I grant an Order of Possession to the Landlord, **effective two days after they serve it to the Tenant**. The Landlord must serve this Order of Possession to the Tenant. Should the Tenant fail to comply with this Order, the Landlord may file this Order with the Supreme Court of British Columbia, where it will be enforced as an Order of that Court.

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: March 24, 2023

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Residential Tenancy Branch