



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Codes** For the tenants: CNR, CNC, FFT  
For the landlord: OPR, OPC, OPN, MNRL-S, MNDL-S, MNDCL-S, FFL

### **Introduction**

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear a cross application regarding the above-noted tenancy.

The tenants' application pursuant to the Act is for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, pursuant to section 46;
- cancellation of a One Month Notice to End Tenancy for Cause, pursuant to section 47; and
- an authorization to recover the filing fee, under section 72.

The landlord's application pursuant to the Act is for:

- an order of possession under a 10-Day Notice to End Tenancy for Unpaid Rent, pursuant to sections 46 and 55;
- an order of possession under a One Month Notice to End Tenancy for Cause, pursuant to sections 47 and 55;
- an order of possession under a tenant's notice to end a tenancy, pursuant to sections 45 and 55;
- a monetary order for unpaid rent, pursuant to section 26;
- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain the security deposit, under section 38; and
- an authorization to recover the filing fee, under section 72.

I left the teleconference connection open until 10:00 A.M. to enable the tenants to call into this teleconference hearing scheduled for 9:30 A.M. The tenants did not attend the

hearing. Landlord RM (the landlord), attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Witnesses JC, GK, WN and KS also attended. 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, his witnesses and I were the only ones who had called into this teleconference.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

#### Service of the tenants' application

The landlord confirmed receipt of the tenant's application. The landlord affirmed that tenants MH and RG moved out in December 2022 and tenant AH moved out around January 14, 2023.

The application to cancel the ten day and the one month notices to end tenancy is moot since the tenancy has ended and the tenants left the rental unit.

I note that section 55 (1.1) of the Act require that when a tenant submits an application for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord under section 46 of the Act, I must consider if the landlord is entitled to an order of possession and monetary order if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the Act.

The tenants did not submit a copy of the ten day notice to end tenancy. Section 55(1.1) does not apply, as I cannot verify if the ten day notice is compliant with the Act.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the tenants' application.

The tenants must bear the cost of the filing fee, as the tenants were not successful.

### Service of the landlord's application

The landlord served the notice of hearing, the amendment and the evidence (the materials) via registered mail on February 18, 2023. The landlord mailed the packages to the rental unit's address, as the landlord does not know the tenants' forwarding address.

Section 89 of the Act states:

(1)An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, 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].

(emphasis added)

Rule of Procedure 3.5 states:

#### 3.5 Proof of service required at the dispute resolution hearing

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

Residential Tenancy Branch Policy Guideline 12 states:

The respondent's address may be found on the tenancy agreement, in a notice of forwarding address, in any change of address document or in an application for dispute resolution.

When a party cannot be served by any of the methods permitted under the Legislation, the Residential Tenancy Branch may order a substituted form of service.

[...]

The decision whether to make an order that a document has been sufficiently served in accordance with the Legislation or that a document not served in accordance with

the Legislation is sufficiently given or served for the purposes of the Legislation is a decision for the arbitrator to make on the basis of all the evidence before them.

Based on the landlord's undisputed testimony, I find the landlord was aware the tenants had moved out when he mailed the materials to the rental unit. As the landlord did not mail the materials to the tenants' forwarding address or where they currently reside, I find the landlord did not serve the materials in accordance with section 89(1) of the Act.

Rule of Procedure 3.1 states:

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].

(emphasis added)

As the landlord did not serve the notice of hearing in accordance with section 89(1) of the Act, I dismiss the landlord's application with leave to reapply. Leave to reapply is not an extension of timeline to apply.

The landlord must bear the cost of the filing fee, as the landlord was not successful.

### Conclusion

I dismiss the tenants' application without leave to reapply.

I dismiss the landlord's application 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 15, 2023