



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## DECISION

Dispute Codes      **OPR-DR, MNR-DR, FFL**

### Introduction

On January 26, 2023, an Adjudicator appointed pursuant to the *Residential Tenancy Act* (the *Act*) adjourned the landlord's application for dispute resolution to a participatory hearing. She did so on the basis of an *ex parte* hearing using the Residential Tenancy Branch's direct request process. The adjudicator adjourned the direct request for the following reasons:

*The landlord has indicated they sent the Proceeding Package and the 10 Day Notice by registered mail to the address of the rental unit. However, the landlord has also indicated that the tenant moved out of the rental unit.*

*I find I am not able to confirm service of the 10 Day Notice and the Notice of Dispute Resolution Proceeding – Direct Request to the tenant in accordance with the Act.*

*Furthermore, I note that the tenancy agreement states that the rent will be increased by \$25% for each additional occupant. The landlord submitted a letter showing the rent was increased by 50% for two additional occupants moving into the rental unit. However, the landlord indicated the original tenant moved out, meaning the total number of occupants has only increased by one. I find these discrepancies raise questions that can only be addressed in a participatory hearing.*

I have been delegated authority under the *Act* to consider the landlord's application for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:30 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m.

### Preliminary Issue

The landlord attended the hearing and testified that on January 27, 2023, he sent the Notice of Dispute Resolution Proceedings package and the adjudicator's decision to the tenant via registered mail to the address of the rental unit. The landlord testified that the package was returned to him by Canada Post as undelivered.

The landlord testified that the tenant had taken on employment in Northern British Columbia and that the tenant no longer resides in the subject rental unit. The tenant occasionally returns to the Lower Mainland of BC and may stay once or twice a month in the rental unit. In evidence, the landlord provided a copy of a text message where the tenant acknowledges his twin brother is now occupying the rental unit and asks the landlord if it's possible to change the lease to his brother's name.

The landlord testified that he "thinks" there are other occupants living in the rental unit. Every month, the landlord has been accepting rent from "a lady" who he thinks may be the tenant's girlfriend however he is not sure. The landlord also acknowledged that he's not sure how many people are now occupying the rental unit, which makes it difficult for the arbitrator to assess how the clause in the tenancy agreement for additional occupants can be levied. The landlord testified that he believes the tenant may have sublet or assigned the tenancy agreement without his written consent.

### Analysis

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 documents];*
- (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*. (Excerpt reprinted below)

### **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.

Based on the testimony of the landlord at today's hearing and the evidence provided, I find that the tenant is not residing in the rental unit. As the tenant does not reside in the rental unit, I am not satisfied he was served with the Notice of Dispute Resolution Proceedings in accordance with section 89(1)(c). Consequently, I dismiss the landlord's application without leave to reapply.

I have also reviewed the proof of service of the landlord's notice to end tenancy and I note, as the adjudicator did, that it was also sent via registered mail to an address where the tenant no longer resides. I find that the tenant was not served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent/Utilities in accordance with section 88 of the Act, as it I cancel it.

#### Conclusion

This application is dismissed without leave to reapply.

The notice to end tenancy is cancelled and of no further force or effect.

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: May 12, 2023

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Residential Tenancy Branch