



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, FFT

### Introduction

This hearing dealt with the tenants' application, filed on August 3, 2022, pursuant to the *Residential Tenancy Act* ("Act"), for:

- a monetary order of \$15,600.00 for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation*, or tenancy agreement, pursuant to section 67; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The two landlords did not attend this hearing. The two tenants, "tenant KO" and tenant ES ("tenant"), 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 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 were provided in the Notice of Hearing. I also confirmed from the teleconference system that the two tenants and I were the only people who called into this teleconference.

Both tenants confirmed their names and spelling. The tenant provided the legal names of the two landlords. She provided her email address for me to send this decision to the tenants after this hearing.

The tenant provided the rental unit address. She identified herself as the primary speaker for the tenants at this hearing. She said that she had permission to represent tenant KO, who is her husband, 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 tenant affirmed, under oath, that neither she, nor tenant KO, would record this hearing.

I explained the hearing process to the tenant. She had an opportunity to ask questions. She did not make any adjournment or accommodation requests.

#### Preliminary Issue – Service of Tenants’ Application

During this hearing, I provided tenants with ample and additional time to look up service evidence and information. The tenant stated that tenant KO was trying to find the registered mail information, including the Canada Post receipts and tracking numbers.

The tenant testified that the landlords were served with the tenants’ application for dispute resolution hearing package on August 3, 2022. She said that the tenants could not find the Canada Post registered mail receipts or tracking numbers during this hearing.

As per the RTB online dispute access site, the tenants were emailed an application package from the RTB, including instructions regarding the hearing process. They were sent a document entitled “Notice of Dispute Resolution Proceeding,” dated August 24, 2022 (“NODRP”) from the RTB, after filing this application. The NODRP contains the phone number and access code to call into this hearing. The tenants were sent the NODRP package with explicit instructions to serve the landlords by August 27, 2022. That email provides instructions regarding service to the landlords, methods of service, and proof of service.

As per the RTB online dispute access site, the tenants were sent an email from the RTB on April 20, 2023, to ask if this hearing was still required. The tenants were then called by the RTB on April 26, 2023, to ask if this hearing was still required, and the tenants responded that it was still required.

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 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 tenants failed to provide sufficient evidence that both landlords were served with the tenants' application, as per sections 59 and 89 of the Act, Rule 3.1 of the RTB Rules, Residential Tenancy Policy Guideline 12, and the NODRP.

The tenants provided a service date of August 3, 2022, which is prior to the NODRP date of August 24, 2022, prior to this hearing being scheduled by the RTB, and prior to the NODRP application package being sent to the tenants by the RTB on August 24, 2022. The tenants did not provide Canada Post registered mail tracking numbers verbally during this hearing, to confirm service to the landlords, as per Residential Tenancy Policy Guideline 12. The landlords did not attend this hearing to confirm service of the tenants' application.

The tenants filed this application on August 3, 2023, and this hearing occurred on May 4, 2023, over 9 months later. The tenants had ample time to serve the landlords, provide evidence of service, and confirm service during this hearing. The tenants were provided with ample and additional time of 11 minutes during this hearing, to locate and provide the Canada Post registered mail tracking numbers verbally, but failed to do so.

I notified the tenant that the tenants' application was dismissed with leave to reapply, except for the \$100.00 filing fee. I informed her that the tenants could file a new application and pay a new filing fee, if they want to pursue this matter in the future. She affirmed her understanding of same.

### Conclusion

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

The remainder of the tenants' 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: May 04, 2023

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Residential Tenancy Branch