



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNC, MNDCT, OLC, FFT

### Dismissal of the Application

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 47 cancelling a One-Month Notice to End Tenancy;
- a monetary order pursuant to s. 67 for compensation or other money owed;
- an order pursuant to s. 62 that the landlord comply with the Act, Regulations, and/or the tenancy agreement;
- return of the filing fee pursuant to s. 72.

Z.D. appeared as the Tenant. The Tenant was joined by Q.L., who assisted him in his submissions. W.S. appeared as the Landlord.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Tenant obtained an order for substitutional service on March 21, 2023 permitting service via email. The Tenant says he served the Landlord with his application and evidence on the Landlord via email on May 4, 2023. The Landlord denies receiving the Tenant’s application and evidence having only received notice of the hearing by way of automated email from the Residential Tenancy Branch on May 5, 2023.

Rule 3.1 of the Rules of Procedure requires applicants to serve the Notice of Dispute Resolution within three days of receiving it from the Residential Tenancy Branch. I accept in these circumstances that the Tenant obtained the order for substitutional service on March 21, 2023, such that strict compliance with Rule 3.1 of the Rules of Procedure was not possible. However, that does not explain why he chose to serve his

application and evidence on May 4, 2023. Further, the interim decision granting substitutional service required the Tenant to provide proof of service as part of these proceedings. None has been provided to me.

I am unable to find that the Tenant served his application on the Landlord. Further, even if I were to accept that the Tenant did send the email of May 4, 2023, I would also find that this is in breach of the purpose of Rule 3.1 of the Rules of Procedure, which is to provide respondents, in this case the Landlord, sufficient notice of an application such that they can prepare. There was no explanation for why he did not serve his application shortly after receiving the substitutional service order. To proceed with the hearing would be deeply prejudicial to the Landlord's right to procedural fairness as he was given either improper notice or truncated notice of the application.

Prior to concluding, I enquired with the Tenant if a notice to end tenancy had been served. The Tenant confirmed none had and that he had moved out of the rental unit on February 28, 2023. The Landlord confirmed this information as well.

Given that the tenancy is over, I dismiss the following claims without leave to reapply:

- an order pursuant to s. 47 cancelling a One-Month Notice to End Tenancy; and
- an order pursuant to s. 62 that the landlord comply with the Act, Regulations, and/or the tenancy agreement.

I also dismiss the Tenant's claim for his filing fee without leave to reapply. The Tenant shall bear the expense of failing to properly demonstrate service of his application.

Considering the issue of service, I dismiss the Tenant's claim for monetary compensation under s. 67 of the *Act* with leave to reapply. Should the Tenant reapply, I would encourage him to review the Rules of Procedure, Policy Guideline #12, and the relevant service provisions of the *Act*.

I make no findings on the substantive issues in dispute. This dismissal does not extend any time limitation that may apply under the *Act*.

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 19, 2023

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Residential Tenancy Branch