



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, FFL;   CNC, FFT

### Introduction

This hearing dealt with the landlords' application, filed on April 18, 2023, pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession for cause, pursuant to section 55; and
- authorization to recover the \$100.00 filing fee paid for their application, pursuant to section 72.

This hearing also dealt with the tenants' application, filed on March 30, 2023, pursuant to the *Act* for:

- cancellation of the landlords' One Month Notice to End Tenancy for Cause, dated March 22, 2023, and effective on April 30, 2023 ("1 Month Notice"), pursuant to section 47; and
- authorization to recover the \$100.00 filing fee paid for their application, pursuant to section 72.

The two landlords and "tenant AJ" did not attend this hearing. Tenant TB ("tenant") attended this hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing lasted approximately 14 minutes from 9:30 a.m. to 9:44 a.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 online teleconference system that the tenant and I were the only people who called into this teleconference.

At the outset of this hearing, the tenant claimed that she was driving, and she worked at a food truck. She said that she had to start work at 10:00 a.m. She claimed that she

was able to fully and safely participate in this hearing, for at least an hour, even if she was driving.

The tenant confirmed her name and spelling. She stated that he had permission to represent tenant AJ at this hearing (collectively “tenants”). She provided the rental unit address. She provided her mailing address for me to send a copy of this decision to both tenants after 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 she would not record this hearing.

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

#### Preliminary Issue – Dismissal of Landlords’ Application

The tenant confirmed receipt of the landlords’ application for dispute resolution hearing package. In accordance with section 89 of the *Act*, I find that both tenants were duly served with the landlords’ application.

Rule 7.3 of the RTB *Rules* provides as follows:

*7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

In the absence of any appearance by the applicant landlords, I order the landlords’ entire application dismissed without leave to reapply.

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

During this hearing, I provided tenant with ample and additional time to look up service evidence and information. She said that she had to look up her documents and information on her phone.

The tenant testified that the landlords were served with the tenants' application for dispute resolution hearing package on May 31, 2023, by way of mail. She said that she did not have any registered mail tracking numbers.

As per the RTB online dispute access site, the tenants were contacted by the RTB on April 20, 2023, to pick up their application package from the RTB, including instructions regarding the hearing process. They were provided with a document entitled "Notice of Dispute Resolution Proceeding," dated April 20, 2023, ("NODRP") from the RTB, on the same date, after filing their application. The NODRP contains the phone number and access code to call into this hearing. The tenants were provided with the NODRP package with explicit instructions to serve the landlords within 3 days, by April 23, 2023.

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):

**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 the 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 did not provide any Canada Post receipts or registered mail tracking numbers to confirm service of the tenants' application to the landlords on May 31, 2023. The tenants did not provide any addresses for service where the landlords were served with the tenants' application. May 31, 2023, is not within 3 days of April 20, 2023. The landlords did not attend this hearing to confirm receipt of the tenants' application.

The tenants filed this application on March 30, 2023, and this hearing occurred on July 20, 2023, almost 4 months later. The tenants had ample time to serve the landlords, provide evidence of service, and confirm service during this hearing. The tenant was provided with ample and additional time of 14 minutes during this hearing, to locate and provide the correct date and sufficient service information but failed to do so. The tenants were contacted by the RTB in April 2023, and were provided with service information.

I notified the tenant that the tenants' application was dismissed with leave to reapply, except for the \$100.00 filing fee, which is dismissed without leave to reapply. The tenants are at liberty to file a new application and pay a new filing fee, if they want to pursue their claim in the future. The tenant affirmed her understanding of same.

### Conclusion

The landlords' entire application is dismissed without leave to reapply.

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: July 20, 2023

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Residential Tenancy Branch