



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR

### Introduction

The tenant applies to cancel a ten day Notice to End Tenancy received August 8, 2020.

The respondent landlord did not attend for the hearing within 10 minutes after its scheduled start time at 11:00 a.m. on September 21, 2020. The teleconference hearing connection remained open during that time in order to enable the parties to call into the teleconference hearing. The call-in numbers and participant codes provided in the Notice of Hearing were confirmed as correct. The teleconference system audio console confirmed that the tenant, his witness Mr. KB and this arbitrator were the only ones who had called into this teleconference during that period.

The tenant's application was made August 10, 2020. He testifies that the Notice of Dispute Resolution Proceeding was personally served by him on the landlord on September 10, 2020.

The landlord has not filed any material on this application. He has however, brought his own application (related file number shown on cover page of this decision) for an order of possession pursuant to this Notice and a claim for rent. That application was made August 29, 2020 and the tenant acknowledges having receive it.

Section 59(3) of the *Residential Tenancy Act* provides that 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. The tenant indicated that he had spoken to someone at the Residential Tenancy Branch about extending the time for service, but there is no indication or evidence that the director has specified a period different than the three day period for service.

The use of the word “must” in s. 59(3) denotes that service within the three day period is a mandatory requirement in the bringing of an application. A respondent at a hearing might conceivably waive the three day requirement, but in the absence of the respondent landlord at this hearing, I determine that the tenant’s application must be dismissed for non-compliance with s. 59(3). As the time limit for bringing another application cannot be extended past the Notice’s effective date of August 20, 2020, I do not grant the tenant leave to re-apply.

At this hearing it was discussed that the Notice may appear to claim rent due during the “affected rent” period instituted by the Residential Tenancy Branch in response to the current viral epidemic and that Notices of that kind had been prohibited. It is up to the tenant to ascertain his legal position in that regard and to convince the arbitrator of the landlord’s application of its merit and his right to raise it as a defence.

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: September 21, 2020

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Residential Tenancy Branch