



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR-DR, MNR-DR

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67.

The tenant did not attend this hearing, which lasted approximately 28 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing began at 9:30 a.m. and ended at 9:58 a.m. I monitored the teleconference line throughout this hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only people who called into this teleconference.

The landlord provided his name and spelling. He stated that he owns the rental unit. He confirmed the rental unit address. He provided his email address for me to send this decision to him after the hearing.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("Rules") does not permit recording of this hearing by any party. At the outset of this hearing, the landlord affirmed, under oath, that he would not record this hearing.

I explained the hearing process to the landlord. He had an opportunity to ask questions, which I answered. I informed him that I could not provide legal advice to him. I notified him that my role as an Arbitrator was to make a decision regarding this application. He

did not make any adjournment or accommodation requests. He confirmed that he was ready and prepared to proceed with this hearing.

Preliminary Issue – Direct Request Proceeding and Service

This hearing was originally scheduled as a direct request proceeding, which is a non-participatory hearing. A decision is made on the basis of the landlord's paper application only, not any participation by the tenant. An "interim decision," dated April 13, 2022, was issued by an Adjudicator for the direct request proceeding. The interim decision adjourned the direct request proceeding to this participatory hearing. The interim decision states the following at page 2:

*Section 13(2)(b) of the Act establishes that a tenancy agreement is required to identify "the correct legal names of the landlord and tenant."*

*I have reviewed all documentary evidence and I find that the tenancy agreement only provides an initial for the landlord's first name.*

*I find this discrepancy in the landlord's name raises a question that can only be addressed in a participatory hearing.*

By way of the interim decision, the landlord was required to serve the interim decision and notice of reconvened hearing to the tenant. The landlord stated that the tenant was served with the above documents on April 15, 2022, by way of registered mail. The landlord provided a Canada Post receipt and confirmed the tracking number verbally during this hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the interim decision and notice of reconvened hearing on April 20, 2022, five days after its registered mailing.

The landlord testified that the tenant was served with the landlord's original direct request application for dispute resolution hearing package on March 23, 2022, by way of registered mail. The landlord provided a Canada Post receipt and confirmed the tracking number verbally during this hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's original direct request application on March 28, 2022, five days after its registered mailing.

The landlord stated that the tenant was served with the landlord's additional evidence package on June 25, 2022. The landlord provided a Canada Post receipt and confirmed the tracking number verbally during this hearing. In accordance with sections

88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's additional evidence package on June 30, 2022, five days after its registered mailing.

### Preliminary Issue – Dismissal of Landlord's Application

The landlord stated that he did not have a copy of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice") in front of him during this hearing, so he could not confirm the information on the notice.

The landlord, as the applicant, has the burden of proof, on a balance of probabilities, to present this application, claims, and evidence. The *Act*, *Regulation*, *RTB Rules*, and Residential Tenancy Policy Guidelines require the landlord to provide evidence of his claims and prove his application, in order to obtain an order of possession and a monetary order.

The landlord received an application package from the RTB, including instructions regarding the hearing process. The landlord testified that he served this application package to the tenant, as required, and as noted above. The landlord received a document entitled "Notice of Dispute Resolution Proceeding," dated April 13, 2022 ("NODRP"), from the RTB. This document contains the phone number and access code to call into this hearing.

The NODRP states the following at the top of page 2, in part (emphasis in original):

*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.*

The landlord received a detailed application package from the RTB, including the NODRP, with information about the hearing process, notice to provide evidence to support this application, and links to the RTB website. It is up to the landlord to be aware of the *Act, Regulation, RTB Rules*, and Residential Tenancy Policy Guidelines. It is up to the landlord, as the applicant, to provide sufficient evidence of his claims, since he chose to file this application on his own accord.

Rule 6.6 of the *RTB Rules* states the following (my emphasis added):

*6.6 The standard of proof and onus of proof*

**The *standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.***

**The *onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.* However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.**

The following *RTB Rules* are applicable and state the following, in part:

*7.4 Evidence must be presented*

*Evidence must be presented by the party who submitted it, or by the party's agent...*

...

*7.17 Presentation of evidence*

*Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...*

*7.18 Order of presentation*

*The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...*

I find that the landlord did not properly present his claims and evidence, as required by Rules 6.6 and 7.4 of the RTB *Rules*, despite having the opportunity to do so during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules*.

This hearing lasted 28 minutes and only the landlord attended the hearing, as the tenant did not attend. During this hearing, I provided the landlord with ample and additional time to search through his documents and provide clear testimony and evidence, but he failed to do so.

The landlord filed this application to obtain an order of possession and a monetary order for unpaid rent, against the tenant, based on the 10 Day Notice.

Pursuant to section 59(2)(b) of the *Act*, an application must include the full particulars of the dispute that is to be the subject of the dispute resolution proceedings. The purpose of the provision is to provide a tenant with notice and enough information to know the landlord's case so that the tenant can properly respond.

Pursuant to section 59(5)(a) of the *Act*, I can refuse to accept an application if it does not disclose a dispute that may be determined. The landlord is the applicant, and has the burden of proof, on a balance of probabilities, to provide sufficient particulars and evidence of this application, and to prove this application at this hearing.

Accordingly, I find that I cannot confirm the dates on the 10 Day Notice or decide whether it complies with section 52 of the *Act* or whether it was issued for a valid reason, because the landlord did not have a copy in front of him during this hearing, in order to confirm this information. I informed the landlord that I could not issue an order of possession based on the 10 Day Notice without confirming the above information.

I informed the landlord that he was notified that this was a participatory hearing, by way of the interim decision, which adjourned his direct request application to this hearing. I notified him that this hearing required his participation, and he did not have the 10 Day Notice that is the subject of this application, in front of him during this hearing. I informed him that I could not issue an order of possession based on the 10 Day Notice, and this portion of his application was dismissed with leave to reapply. He confirmed his understanding of same.

At the end of this hearing, I was required to caution the landlord about interrupting me and speaking at the same time as me. The landlord stated that he was "frustrated" with my decision to dismiss his application for an order of possession with leave to reapply. I

informed him that he was required to be fully prepared for this hearing, including having a copy of all of his application documents, including the 10 Day Notice that is the subject of this application, in front of him during this hearing, in order to confirm the information, so that I could make a decision. The landlord confirmed his understanding of same.

During this hearing, I offered the landlord the option to continue this hearing and provide evidence regarding his application for a monetary order for unpaid rent, so that I could make a decision regarding same. The landlord asked for leave to reapply regarding this claim, stating that he did not want to deal with it at this hearing, and he wanted to provide updated evidence at a later date. I informed him that, as per his request, his application for a monetary order for unpaid rent was dismissed with leave to reapply. He confirmed his understanding of same.

### Conclusion

The landlord's entire 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 26, 2022

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Residential Tenancy Branch