



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## DECISION

Dispute Codes      RP, LRE, FFT

### Introduction

This hearing dealt with the tenants' application, filed on November 15, 2022, pursuant to the *Residential Tenancy Act* ("Act") for:

- an order requiring the landlords to complete repairs to the rental unit, pursuant to section 32;
- an order restricting the landlords' right to enter the rental unit, pursuant to section 70; 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 WM ("tenant") and "tenant FT," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of this hearing, the tenants stated that they were the only participants in this hearing. During this hearing, another voice began yelling at me from the tenants' telephone line. The tenant confirmed that it was his son, who he said lived with him, and joined the tenants in the same room. The tenant stated that he told his son to leave the room and he would not be participating in this hearing.

This hearing lasted approximately 17 minutes. This hearing began at 11:00 a.m. and ended at 11:17 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 Dispute Resolution Proceeding ("NODRP"). I also confirmed on the teleconference system that the two tenants and I were the only people who called into this hearing.

Both tenants confirmed their names and spelling. The tenant provided his email address for me to send a copy of this decision to both tenants after this hearing. He identified himself as the primary speaker for both tenants.

Rule 6.11 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure (“Rules”)* does not permit recordings of any hearings by any participants. At the outset of this hearing, the two tenants separately affirmed, under oath, that they would not record this hearing.

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

I provided both tenants with ample and additional time of 17 minutes during this hearing to find their application, documents, and service information.

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

The tenant initially claimed that he did not have service evidence in front of him, only his lawyer did. He later claimed that he found the service information, including the Canada Post receipts and tracking numbers. He said that he did not provide the above documents for this hearing because he did not know that he was supposed to do so.

The tenant stated that both landlords were served with separate copies of the tenants’ application for dispute resolution hearing package on November 24, 2022, both by way of registered mail. The tenant provided two Canada Post tracking numbers verbally during this hearing. He did not state what addresses the above mail was sent to, nor did he indicate whether the landlords received or signed for the above mail packages.

As per the online RTB dispute access site, the RTB emailed copies of the tenants’ application documents to the tenants on November 24, 2022, and told the tenants to serve the landlords by November 27, 2022.

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 tenants were provided with application packages from the RTB, including instructions regarding the hearing process. The tenants were provided with the NODRP from the RTB, after filing this application. The NODRP contains the phone numbers and access code to call into this hearing.

The NODRP states the following at the top of page 2, in part (my emphasis added, which I informed the tenants 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.***

The tenants did not provide copies of any Canada Post receipts, tracking numbers, or tracking reports, for this hearing, as per Residential Tenancy Policy Guideline 12, above.

However, I accept the affirmed testimony of the tenant that both landlords were served with the tenants' application by registered mail on November 24, 2022, as the tenant provided two Canada Post tracking numbers verbally during this hearing.

Accordingly, I find that both landlords were deemed served with the tenants' application on November 29, 2022, five days after their registered mailings.

#### Preliminary Issue – Dismissal of Tenants' Application

The tenant stated that the tenants still occupy the rental unit and have no plans to move out. He agreed that an order of possession was granted against the tenants, effective February 28, 2023, at a previous RTB hearing on February 3, 2023. The file numbers for that hearing appears on the cover page of this decision. The tenants filed a review of the above decision, which was also dismissed by another Arbitrator on February 7, 2023. The tenant claimed that the tenants obtained a stay of the order of possession from the Supreme Court of British Columbia on February 24, 2023, but he did not provide proof of same, claiming that he did not know he was supposed to do so.

The tenant stated that he wanted to proceed with this hearing. He said that he did not have his application in front of him during this hearing. He claimed that his lawyer had it. He explained that the tenants had "no time" to go to their lawyer's office. He agreed that he received reminder emails from the RTB about this hearing date and providing evidence, prior to this hearing. He agreed that he received an email from the RTB on March 3, 2023, asking whether this hearing was still required, and he replied to the RTB on March 6, 2023, stating that it was still required.

#### Burden of Proof

The tenants, as the applicants, have the burden of proof, on a balance of probabilities, to prove this application. The *Act, Regulation, RTB Rules*, and Residential Tenancy Policy Guidelines require the tenants to provide evidence of their claims, in order to obtain orders against the landlords.

As noted above, the tenants received a detailed application package from the RTB, including the NODRP documents, 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 tenants to be aware of the *Act, Regulation, RTB Rules*, and Residential Tenancy Policy Guidelines. It is up to the tenants to provide sufficient evidence of their claims, since they chose to file this application on their own accord.

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

*2.5 Documents that must be submitted with an Application for Dispute Resolution*

*To the extent possible, the applicant should submit the following documents at the same time as the application is submitted:*

- a detailed calculation of any monetary claim being made;*
- a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and*
- copies of all other documentary and digital evidence to be relied on in the proceeding, subject to Rule 3.17 [Consideration of new and relevant evidence].*

*When submitting applications using the Online Application for Dispute Resolution, the applicant must upload the required documents with the application or submit them to the Residential Tenancy Branch directly or through a Service BC Office within three days of submitting the Online Application for Dispute Resolution.*

...

*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 tenants did not sufficiently present their application, claims, and evidence, as required by Rule 7.4 of the RTB *Rules*, despite having multiple opportunities to do so, during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules*. During this hearing, the tenants failed to sufficiently review and explain their claims and the documents submitted with their application.

This hearing lasted 17 minutes, so the tenants had ample time and multiple opportunities to present their application and evidence. I repeatedly asked the tenants if they had any information to present, during this hearing. The tenants did not have their application in front of them and did not provide testimony regarding their claims, at this hearing.

### Findings

Pursuant to section 59(2)(b) of the *Act*, the tenants' application must include the full particulars of the dispute that is the subject of this hearing. The purpose of the provision is to provide the landlords with notice and enough information to know the tenants' claims so that the landlords 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 tenants filed their application, and, as the applicants, have the burden of proof, on a balance of probabilities, to apply for the correct claims, provide sufficient particulars and evidence of their claims, and prove their claims at a hearing, on a balance of probabilities.

The tenant confirmed that the tenants only provided 3 photographs as evidence with their application. He agreed that they provided a photograph of a two-sided security deposit receipt titled "security\_Deposit." Another photograph is a one-page cat adoption application, titled "Wall\_with\_exposed\_electrical\_panel" and the last photograph appears to be an attic opening in the ceiling, titled "Open\_wall\_with\_no\_taps."

Regarding their repairs claim, the tenants provided the following description on the online RTB dispute access site:

*"I phoned the landlord to request that my bathtub taps need repair he came down said to me yes, he would repair one thing lead to another and the next I knew walls were coming down the bathtub was removed a new tub was put in place but not hooked up this all started Sept 22nd 2022.the landlord had a disagreement with my wife he yelled at her she told him to .My wife has problems with stress and takes medication for it and now has a big problem with being around the landlord."*

Regarding their order to restrict the landlords' entry claim, the tenants provided the following description on the online RTB dispute access site:

*“My wife has anxiety attacks when I mention that the landlord who is also our maintenance person needs to come back to finish the work, I am asking if we can get a contractor in to do the work. when I ask my wife to leave so work can be done she has an attack. If she came home to having been all hell would break loose, I'm not sure if she would hurt herself because of a huge anxiety attack”*

I informed the tenants that they filed this application on November 15, 2022, and this hearing occurred on March 30, 2022. The tenants had ample time of approximately 4.5 months, to know the full details of their application, to prepare for this hearing, to obtain legal advice and representation, and to provide accurate and detailed testimony and evidence, but failed to do so. The tenants did not have their application in front of them during this hearing and did not provide sufficient evidence of testimony of their claims.

On a balance of probabilities and for the above reasons, I dismiss the tenants' entire application without leave to reapply, including the \$100.00 filing fee. I find that the tenants failed to provide sufficient documentary and testimonial evidence of their claims. I informed the tenants of my decision verbally during this hearing.

### Conclusion

The tenants' entire application is dismissed without 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: March 30, 2023

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Residential Tenancy Branch