



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding AMACON GILBERT ROAD DEVELOPMENT  
PARTNERSHIP and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

CNR, FFT

### **Introduction**

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on December 17, 2022 the Dispute Resolution Package was sent to the Landlord, via registered mail. The Agent for the Landlord acknowledged receipt of these documents.

On December 18, 2022, the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord with the Application for Dispute Resolution. The Agent for the Landlord denied receipt of this evidence.

A copy of the tenancy agreement and a One Month Notice to End Tenancy for Cause was included in the evidence package submitted to the Residential Tenancy Branch by the Tenant. The Agent for the Landlord stated that she is in possession of these documents. As the Landlord is in possession of these documents, the parties were advised that they would be accepted as evidence for these proceedings.

A copy of a bank document was included in the evidence package submitted to the Residential Tenancy Branch by the Tenant. The Agent for the Landlord stated that she did not receive this document. As there is insufficient evidence to determine that it was mailed to the Landlord, as the Tenant contends, or that it was not received by the

Landlord, as the Agent for the Landlord contends, I cannot accept this document as evidence. The parties were advised that the hearing would proceed, the Tenant could discuss this document, and that the Tenant could request an adjournment, later in the hearing, if the Tenant considered it necessary for me to view this document.

On April 14, 2023, the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Tenant, via registered mail, on April 13, 2023. The Agent for the Landlord cited a Canada Post tracking number that corroborates this testimony. The Tenant stated that he did not receive this mail and he did not receive notification from Canada Post that mail had been sent to him.

On the basis of the testimony of the Agent for the Landlord, I accept that evidence was mailed to the Tenant on April 13, 2023. On the basis of the testimony of the Tenant, I find this evidence was not received. I find it possible that there was an error and the Tenant did not receive notice of this registered mail.

As I am not satisfied that the Tenant received notice of the aforementioned registered mail, I cannot accept the Landlord's evidence as evidence for these proceedings. The parties were advised that the hearing would proceed, the Landlord could discuss the Landlord's evidence, and that the Landlord could request an adjournment, later in the hearing, if the Landlord considered it necessary for me to view this evidence.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings.

The parties were able to reach a settlement in this dispute. As such, there was no need for an adjournment for the purpose of re-serving evidence.

### Issue(s) to be Decided

Should a Notice to End Tenancy be set aside?

### Background and Evidence

Prior to the discussion of the merits of the Application for Dispute Resolution, the Agent for the Landlord and the Tenant mutually agreed to settle all issues in dispute at these proceedings under the following terms:

- The tenancy will end, by mutual agreement, on July 31, 2023; and
- There will be no smoking on the balcony or in the rental unit for the remainder of the tenancy.

This agreement was summarized for the parties on at least two occasions. The Agent for the Landlord and the Tenant clearly indicated that they agreed to resolve this dispute under these terms.

The Agent for the Landlord and the Tenant each acknowledged that they understand they were not required to enter into this agreement and that they understood the agreement was final and binding.

### Analysis

The parties mutually agreed to resolve all issues in dispute at these proceedings in accordance with the aforementioned terms.

The parties are obligated to comply with the terms of this agreement.

### Conclusion

On the basis of the settlement agreement reached at the hearing, I grant the Landlord an Order of Possession that is effective on **at 1:00 p.m. on July 31, 2023**. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: April 25, 2023

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Residential Tenancy Branch