

# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## **Decision**

**Dispute Codes:** MNR OPR FF

## **Introduction**

This matter dealt with an application by the landlord for an order of possession and a monetary order related to unpaid rent.

The landlord appeared at the hearing, but there was no appearance by or on behalf of the tenant.

## **Issue(s) to be Decided**

Is the landlord entitled to a monetary order, and if so in what amount?

Is the landlord entitled to an order of possession?

## **Background and Evidence**

The landlord's evidence at the hearing is as follows:

- the tenancy commenced on June 1, 2008
- the monthly rent payable is \$850.00
- the landlord holds a security deposit of \$425.00
- the tenant did not pay the rent for the month of November
- the landlord served the tenant with a 10 Day Notice to End Tenancy on November 4, 2008 by posting it on the door of the rental unit
- the landlord filed an application for dispute resolution on November 13, 2008

- the landlord states that the tenants moved out of the rental unit on November 15, 2008 but have left furniture behind
- the landlord served the application for dispute resolution and the notice of hearing on November 16, 2008 by posting it on the door of the rental unit

### **Analysis**

In reviewing the evidence of the landlord, I find several key problems which I will address.

The landlord has failed to provide the Notice to End Tenancy for the hearing. I am required to ascertain that the Notice was properly issued before I can issue an order of possession. The failure of the landlord to provide the notice for scrutiny is a serious flaw and I decline to issue the order.

I further find that the evidence of the landlord is that the application for dispute resolution and the notice of hearing were posted on the door of the rental unit on November 18, 2008. The landlord's evidence at the hearing is that the tenants vacated the rental unit on November 15, 2008. The service requirements contain in s. 89(2)(c) of the *Residential Tenancy Act*, state that the notice may be posted on the door "*at the address where the tenant resides*". The landlord was aware that the tenant did not reside there, and had moved out the day before. I find that proper service has not been carried out.

In regards to the landlord's application for a monetary order, I also find that posting of the notice on the door is only applicable for an order of possession (s. 89(2)(c) ) and that for a monetary order, the manner of service must comply with s. 89(1) as shown below. The landlord's method of service does not comply and as such proper service has not been carried out.

## Special rules for certain documents

**89** (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, 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]*.

(2) An application by a landlord under section 55 *[order of possession for the landlord]* , 56 *[application for order ending tenancy early]* or 56.1 *[order of possession: tenancy frustrated]* must be given to the tenant in one of the following ways:

- (a) by leaving a copy with the tenant;
- (b) by sending a copy by registered mail to the address at which the tenant resides;
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;
- (e) as ordered by the director under section 71 (1) *[director's orders: delivery and service of documents]*.

**Conclusion**

I find that the landlord has failed to provide the Notice to End Tenancy and to carry out proper service of documents as required.

I dismiss the application with leave to reapply.

Dated: December 4, 2008