



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes            OPR, MNR, MND, MNDS, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain an Order of Possession due to unpaid rent, a Monetary Order for unpaid rent and damages, an Order to keep the tenants security deposit and to recover the cost of the filing fee.

The landlord states that he served the tenant by registered mail with a Notice of hearing documents on February 04, 2011. However, the landlord also states that the tenant abandoned the rental unit on February 01, 2011. Therefore, I can not conform from the landlords' evidence that the tenant was served according to section 89 of the *Act*.

### Analysis

Section 89 of the *Act* states that hearing documents must be given in one of the following ways:

- 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*].

The landlords' evidence shows that the documents were sent to the tenants address after she had moved out. Consequently, I am unable to determine that the tenant was sufficiently served for the purposes of the *Act*.

Section 12 of the Residential Tenancy Policy Guidelines states: Failure to prove service may result in the matter being dismissed, or dismissed with leave to reapply.

### Conclusion

To find in favour of an application, I must be satisfied that the rights of all parties have been upheld by ensuring the parties have been given proper notice to be able to defend their rights. As the tenant had moved from the rental unit before the landlord served the hearing documents at the rental address, I dismiss the landlord's application 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: February 22, 2011.

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Residential Tenancy Branch