



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      OPR MNR FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, served via registered mail on February 22, 2011. A copy of the Canada Post receipt was provided in the Landlord's evidence. The Tenant is deemed to have been served notice of today's hearing on February 27, 2011, in accordance with section 90 of the *Act*.

The Landlord appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. No one appeared on behalf of the Tenant despite him being served notice of this hearing in accordance with the *Act*.

### Issues(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. Has the Landlord met the burden of proof to obtain an Order of Possession and a Monetary Order as a result of that breach?

### Background and Evidence

The Landlord testified he had entered into a written tenancy agreement with the person named as the respondent to this application. The Tenant is rarely there now and he has let numerous other occupants reside in the rental unit.

The Landlord confirmed that no rent has been paid for January, February or March and he has been unable to contact the Tenant. He had his agent serve the Tenant with a 10 Day Notice to End Tenancy in person. The Landlord was not witness to the service. His Agent did not provide a written affidavit confirming the terms of the service of the 10 Day Notice and he was not in attendance at the teleconference hearing.

### Analysis

I accept the Landlord entered into a written tenancy agreement with the Tenant who is named as the respondent to this dispute. The Tenant has allowed other people to gain access to, and reside in, the rental unit. These additional people are occupants and not Tenants.

Where a tenant allows a person who is not a tenant to move into the premises the new occupant has no rights or obligations under the tenancy agreement. The *Residential Tenancy Act* does not govern occupants; therefore if the Landlord has not given these people permission to occupy his property he may seek a remedy through another Court.

Residential Tenancy Branch Rules of Procedure 3.3 stipulate that if a respondent does not attend the dispute resolution proceeding, the application must prove to the Dispute Resolution Officer that each respondent was served as required under the Act. If served in person, the person who served the documents must either attend the dispute resolution proceeding as a witness, either in-person or by conference call, or provide a written affidavit of service.

As per the Landlord's testimony it was his Agent who served the tenant the 10 Day Notice to End Tenancy and in his absence at the hearing, I find the applicant has failed to prove service of the 10 Day Notice has been effected in accordance with the *Act*.

To find in favour of an application for an Order of Possession and a Monetary claim, 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 I have found the service of the 10 Day Notice documents not to have been effected in accordance with the *Act*, I dismiss the Landlord's claim.

As the Landlord has not been successful with his application, I find that he is not entitled to recover the cost of the filing fee from the Tenant.

Conclusion

**I HEREBY ORDER** the 10 Day Notice to End Tenancy issued for Unpaid Rent and dated February 5, 2011, is void and is without force or effect.

**I HEREBY DISMISS** the Landlord's application, without leave to reapply.

The people who are residing in the rental unit and who are not named as tenants on tenancy agreement are **occupants** and have no rights or obligations under the tenancy agreement. The Landlord may seek a remedy to have these occupants removed through another 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 *Residential Tenancy Act*.

Dated: March 15, 2011.

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Residential Tenancy Branch