



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      MNR, FF

### Introduction

This conference call hearing was convened in response to the landlord's application for a Monetary Order for unpaid rent and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to recover the filing fee?

### Background and Evidence

In her documentary evidence, the landlord provided a copy of the fixed term tenancy agreement that started on March 1<sup>st</sup>, 2009, and ended on April 1<sup>st</sup>, 2010. The rent was \$1000.00 per month. The landlord testified that the tenant did not provide her with proper written notice to end the tenancy when she left on April 1<sup>st</sup>, 2010. She said that she did not become aware that the tenant was moving out until sometime in April and she is claiming one months' rent for May 2010.

The tenant's documentary evidence included a copy of an email sent to the landlord on March 30<sup>th</sup>, 2010, wherein the tenant forewarned the landlord that she would email her notice to end tenancy the next day, and that she would also drop the notice off at the landlord's place of work. The tenant provided a copy of her March 31<sup>st</sup>, 2010 email to the landlord with the notice to end tenancy sent as an attachment. The tenant testified that she also dropped off the letter at the landlord's place of work the same day. She stated that the landlord was not in and that she left the notice with the secretary. The tenant said that dropping off correspondence at the landlord's place of work was an accepted practice that she used on a regular basis during the tenancy.

The landlord stated that she did not receive the tenant's emails or the letter that she dropped off at her office.

### Analysis

Before a Dispute Resolution Officer can make an order under section 67 of the *Residential Tenancy Act*, the applicant must first prove the claim stemmed from the other party's violation of the Act, regulation, or tenancy agreement. When this requirement is not satisfied, and particularly when the parties' testimony is at odds, in the absence of other substantive independent evidence the burden of proof is not met. In this matter that burden was on the landlord to prove his claim against the tenant.

Section 88 of the Act states in part that proper service of documents must be done in one of the following ways:

- By leaving a copy with the person;
- If the person is a landlord, by leaving a copy with an agent of the landlord.

Under this section, email is not recognized as an approved method to serve documents on a person. I turn my attention however to the tenant's testimony that she also dropped the letter off at the landlord's place of work, as this had been an accepted method of

delivery in the past. The Act defines in part a landlord as a person who, on behalf of the landlord, exercises powers and performs duties under this Act, the tenancy agreement or a service agreement. It was not disputed that the landlord's place of work had been previously used as a place where the tenant could deliver correspondence related to the tenancy. I accept that the tenant dropped off the letter, and that she would expect that the landlord would receive it as she has in the past. In that context, I find that at the landlord's place of work, the secretary performed duties related to the tenancy agreement.

I find that the landlord ought to have received the tenant's notice at her place of work. The landlord did not prove, on the balance of probabilities that the tenant breached the Act and on that basis her claim must fail.

### Conclusion

The landlord's application is dismissed.

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: April 13, 2011.

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Residential Tenancy Branch