



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## Decision

**Dispute Codes:** MNR, OPR, FF

### Introduction

This Dispute Resolution hearing was held to deal with an Application by the landlord for a monetary order and an Order of Possession. The landlord was in attendance. The tenant did not appear.

### Preliminary Issue

The landlord testified that the hearing package was served on the tenant and when the tenant did not answer, was left at the door, as witnessed by an individual who was present at the time. The landlord submitted into evidence a copy of the witness' written statement verifying that the Notice was served by leaving the package at the door.

Sections 88 and 89 of the Act determine the required method of service for documents.

Because the landlord had applied for a Monetary Order under section 67 of the Act, there is a mandatory requirement that the landlord serve the tenant as set out under **section 89(1) of the Act**. This section states that the landlord must serve in one of the following ways:

(a) **by leaving a copy with the person, (personal service);**

(c) **by sending a copy by registered mail to the address at which the person resides**

In this case evidence shows that the documents were left at the door and this manner of service is not in compliance with section 88 of the Act, which applies when an applicant is seeking a monetary order.

However **section 89(2)** does permit an application by a landlord under section 55 **[order of possession for the landlord]**, (my emphasis). An Application seeking an Order of Possession is permitted to be served by:

- leaving a copy at the tenant's residence with an adult who apparently resides with the tenant,

- by attaching a copy to a door or other conspicuous place at the address at which the tenant resides,
- in personal
- by regular or registered mail.

In this instance, because the landlord left the Notice of Hearing at the tenant's door, I find that this method of service would only comply with the Act for the purpose of the Order of Possession, and is not adequate service to proceed with the part of the application for the monetary order.

Having found that the landlord has failed to prove adequate service of the Notice of Hearing and Application for Dispute Resolution, for the monetary order, I find that the portion of landlord's application dealing with the monetary claim must be dismissed and I do so with leave to reapply at a later date, should the landlord wish to do so.

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

The remaining issue to be determined is whether or not the landlord is entitled to an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent

### **Background and Evidence**

The landlord submitted into evidence a copy of the 10-Day Notice to End Tenancy dated October 31, 2011 with effective date of November 9, 2011. The landlord testified that the tenancy began in April 2011, at which time the tenant paid a security deposit of \$350. The landlord testified that the current rent is \$700.00. However, the tenant fell into arrears and was served with a Ten-Day Notice. The landlord testified that the tenant failed to pay all of the arrears and now owes \$900.00. The landlord testified that the tenant has not fully vacated the unit and the landlord has requested an Order of Possession.

### **Analysis**

Based on the testimony of the landlord, I find that the landlord served the tenant with a Notice to End Tenancy for Unpaid Rent and the tenant has not paid the outstanding rent nor did the tenant apply to dispute the Notice. Therefore the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. Based on the above facts I find that the landlord is entitled to an Order of Possession.

**Conclusion**

I hereby issue an Order of Possession in favour of the landlord effective immediately after service on the tenant. This can be served in person, by mail or posted on the door. Should it be necessary, the order may be filed in the Supreme Court and enforced as an order of that Court.

I hereby grant the Landlord the cost of the application in the amount of \$50.00 which the landlord can retain from the tenant's security deposit.

The monetary portion of the landlord's application is dismissed 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: December 08, 2011.

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Residential Tenancy Branch