



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

OPR, MNR

### Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to sections 55(4) and 74(2) of the *Residential Tenancy Act (Act)*, and dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession and a monetary order.

### Background and Analysis

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 16, 2011 an agent for the Landlord mailed the Notice of Direct Request Proceeding to the Tenant with the initials Y.Z., via registered mail. The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 16, 2011 an agent for the Landlord mailed the Notice of Direct Request Proceeding to the Tenant with the initials J.D., via registered mail.

The Landlord submitted a copy of a receipt from Canada Post that shows that one package was mailed to the rental unit. The receipt indicates that the package was mailed to both Tenants. On the basis of the Proofs of Service and in the absence of evidence to the contrary, I find that a package, which contained a Notice of Direct Request Proceeding for each Tenant, was mailed to the rental unit on November 16, 2011. As the package was addressed to both Tenants, however, I find that I am unable to determine from the evidence submitted which of the two Tenants actually received the package.

The Landlord has applied for a monetary Order which requires that the Landlord serve each Respondent as set out under section 89(1) of the *Act*. Section 89(1) of the *Act* stipulates, in part, that a landlord must serve a tenant with an Application for Dispute Resolution in one of the following ways:

- (a) by leaving a copy with the person;
  - (c) by sending a copy by registered mail to the address at which the person resides;
  - (d) by sending a copy by registered mail to a forwarding address provided by the tenant;
- or

(e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

There is no evidence to show that either Tenant was served with Notice of the Direct Request Proceeding pursuant to section 89(1)(a); 89(1)(d); or 89(1)(e) of the *Act*.

As I am unable to determine which of the two Tenants actually received the package that was mailed to the rental unit, I cannot conclude which of the two Tenants was served with the Notice of Direct Request Proceeding pursuant to section 89(1)(c) of the *Act*.

The Landlord submitted no evidence to cause me to conclude that either Tenant received the Application for Dispute Resolution, therefore I cannot conclude that the Application has been sufficiently served pursuant to sections 71(2)(b) or 71(2)(c) of the *Act*.

The Landlord has also applied for an Order of Possession, which requires that the Landlord serve each Respondent as set out under section 89(2) of the *Act*. Section 89(2) of the *Act* stipulates, in part, that a landlord must serve a tenant with an Application for Dispute Resolution 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; or
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

There is no evidence to show that either Tenant was served with Notice of the Direct Request Proceeding pursuant to section 89(2)(a); 89(2)(d); or 89(2)(e) of the *Act*.

As has been previously stated, I am unable to determine which of the Tenant was served with the Notice of Direct Request Proceeding by registered mail, although I accept that one of them was served in accordance with section 89(2)(b) of the *Act*.

I find that I am unable to conclude that the other Tenant was served with the Notice of Direct Request Proceeding pursuant to section 89(2)(c) of the *Act*, as I have no evidence to show that either of the Tenants is an adult.

## Conclusion

As I am unable to conclude that either Tenant was served with the Notice of Direct Request Proceeding in accordance with section 89(1) of the *Act*, I dismiss the Landlord's application for a monetary Order, with leave to reapply.

As I am unable to determine which of the two Tenants was served in accordance with section 89(2) of the *Act*, I dismiss the Landlord's application for an Order of Possession, 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: November 22, 2011.

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Residential Tenancy Branch