



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, ET, FF

### Introduction

This hearing dealt with an application by the landlord for an order of possession for unpaid rent, a monetary order for unpaid rent, to end the tenancy early and recovery of the filing fee.

The landlord participated in the conference call hearing but the tenant did not. The landlord presented evidence that the tenant was served with the application for dispute resolution and notice of hearing by registered mail.

### Issue(s) to be Decided

Is the landlord entitled to any of the above under the Act.

### Background and Evidence

This tenancy began February 15, 2011 with monthly rent of \$800.00 and the tenant paid a security deposit of \$400.00.

On January 3, 2012 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent.

The landlord stated that he had been advised in mid January by a friend of the tenant's that the tenant was in a mental health facility. The landlord then served the tenant with the documents for this hearing by registered mail on January 23, 2012.

The landlord stated that he posted notice and entered the rental unit at the end of January, found the rental unit unoccupied and the back door unlocked. The landlord stated that he locked the back door and left.

The landlord stated that he then posted another 10 day notice for unpaid rent for the month of February and that notice remains affixed to the door.

The landlord stated that he is not certain but that he believes the tenant may still be in the mental health facility. The landlord mention that he had included the tenant's mother's phone number on the application for dispute but had not served the tenant's mother with the hearing documents as it was not conformed if the mother would act as an agent for the tenant.

### Analysis

Based on the documentary evidence and undisputed testimony of the landlord, I find on a balance of probabilities that the landlord has not met the burden of proving that they have grounds for entitlement to an order of possession or monetary order for unpaid rent.

There is no dispute that rent remains unpaid for the rental unit however as the tenant was in a mental health facility at the time of service by registered mail and remains in a mental health facility, the tenant had no possibility of being receipt of the hearing documents. Therefore as the service provisions have not been met, the landlord's claim cannot be heard.

The landlord may need to determine if the tenant's mother or friend will act as an agent for the tenant or in the future may file for dispute resolution under the grounds of abandonment of the rental unit.

The landlord's application is dismissed with leave to reapply.

As the landlord has not been successful in their application the landlord is not entitled to recovery of the \$50.00 filing fee.

### Conclusion

The landlord's application is dismissed with liberty 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 15, 2012

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Residential Tenancy Branch