



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

OPR, MNR, MNSD, MND, FF

### Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, a monetary Order for damage to the rental unit; to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The female Agent for the Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the male Tenant at the rental unit, via registered mail, on January 17, 2012. The Agent for the Landlord cited a Canada Post tracking number that corroborates this statement.

The female Agent for the Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the female Tenant at the rental unit, via registered mail, on January 17, 2012. The Agent for the Landlord cited a Canada Post tracking number that corroborates this statement.

At this point in the hearing I concluded that the aforementioned documents had been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, and I proceed with the hearing.

### Background and Evidence

The female Agent for the Landlord stated that on, or about, January 15, 2012 she had a telephone conversation with the female Tenant, at which time the female Tenant told her that she had moved out of the rental unit, although she did not tell her when she moved out of the unit; that the male Tenant had also moved out of the rental unit; and that the few personal items remaining in the unit belong to the male Tenant.

The female Agent for the Landlord stated that on January 17, 2012 she had a telephone conversation with the male Tenant, at which time the male Tenant told her that he had moved out of the rental unit, although he did not tell her when he moved out of the unit; that he was living in Ontario; and that he did not intend to return to the rental unit.

The female Agent for the Landlord stated that on January 17, 2012 she entered the rental unit and determined that only a few personal possessions were left in the unit.

### Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that both the male and the female Tenant abandoned the rental unit sometime prior to January 17, 2011.

The purpose of serving the Application for Dispute Resolution and the Notice of Hearing to tenants is to notify them that a dispute resolution proceeding has been initiated and to give them the opportunity to respond to the claims being made by the landlord. When a landlord files an Application for Dispute Resolution in which the landlord has applied for a monetary Order, the landlord has the burden of proving that the tenant was served with the Application for Dispute Resolution in compliance with section 89(1) of the *Residential Tenancy Act (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*].

The Landlord submitted no evidence to show that either Tenant was personally served with the Application for Dispute Resolution and Notice of Hearing and I therefore find that neither Tenant was served in accordance with section 89(1)(a) of the *Act*.

Although I accept that the Landlord mailed the Application for Dispute Resolution and Notice of Hearing to the rental unit on January 17, 2012, neither of the Tenants were living at the unit at that time. I therefore find that neither Tenant was served in accordance with section 89(1)(c) of the *Act*.

The Landlord submitted no evidence that the Application for Dispute Resolution was mailed to a forwarding address for the Tenant and I cannot, therefore, conclude that either Tenant was served in accordance with section 89(1)(d) of the *Act*.

There is no evidence that the director authorized the Landlord to serve the Application for Dispute Resolution to the Tenant in an alternate manner, therefore I find that neither Tenant was served in accordance with section 89(1)(e) of the *Act*.

When a landlord files an Application for Dispute Resolution in which the landlord has applied for an Order of Possession, the landlord has the burden of proving that the tenant was served with the Application for Dispute Resolution in compliance with 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;
- (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*].

The Landlord submitted no evidence that the Application for Dispute Resolution was served by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant and I cannot, therefore, conclude that either Tenant was served in accordance with section 89(2)(c) of the *Act*.

The Landlord submitted no evidence that the Application for Dispute Resolution was served by attaching a copy to a door or other conspicuous place at the address at which the tenant resides and I cannot, therefore, conclude that either Tenant was served in accordance with section 89(2)(d) of the *Act*.

There is no evidence that the director authorized the Landlord to serve the Application for Dispute Resolution to the Tenant in an alternate manner, therefore I find that neither Tenant was served in accordance with section 89(2)(e) 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*.

### Conclusion

As I have determined that the Tenant has not been properly served with the Application for Dispute Resolution, I dismiss the Landlord's Application for Dispute Resolution, with leave to reapply.

The Landlord and the Tenant are both encouraged to seek guidance from the Residential Tenancy Branch to determine their rights and obligations once a rental unit has been abandoned.

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 01, 2012.

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Residential Tenancy Branch