



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to an application made by the landlord for an Order of Possession for unpaid rent or utilities; for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fees from the tenant for the cost of this application.

An agent for the landlord company attended the conference call hearing, gave affirmed testimony and provided evidence in advance of the hearing. However, despite being personally served with the Landlord's Application for Dispute Resolution and notice of hearing documents, the tenant did not attend. The landlord's agent testified that the tenant was personally served on April 23, 2012.

### Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

### Background and Evidence

The landlord's agent testified that he has recently learned that service by registered mail is deemed under the *Residential Tenancy Act* to have been served 5 days after such mailing. The landlord's application was filed on April 19, 2012 and the notice of hearing which provides the phone number, passcode and date and time of the hearing was issued by the Residential Tenancy Branch on the same date and provided to the

landlord's agent for service upon the tenant. The tenant was personally served on April 23, 2012.

### Analysis

The *Residential Tenancy Act*, Section 59 (3) states that, "... a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director."

In this case, it is clear that the landlord did not serve the tenant in accordance with the *Act*, and therefore, in the absence of the tenant, the application must be dismissed.

The landlord is at liberty to serve the tenant with a notice to end tenancy if rent remains unpaid, however, the landlord may not re-apply for dispute resolution to enforce any notice to end tenancy that was issued to the tenant prior to the commencement of this hearing.

### Conclusion

For the reasons set out above, the landlord's application is hereby dismissed without 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: May 09, 2012.

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Residential Tenancy Branch