



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

OPR, MNR, MNSD, 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, 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. At the hearing the Landlord withdrew the application for an Order of Possession, as the rental unit has been vacated.

### Issue(s) to be Decided

The issue to be decided is whether this hearing can proceed in the absence of the Tenant.

### Background and Evidence

The Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were posted on the door of the rental unit on July 19, 2012; that he phoned the Tenant and left a message informing him it had been posted; that he did not observe the Tenant remove the documents; and that he noticed they were gone from the door of the rental unit the next day.

### Analysis

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 that the Application for Dispute Resolution was personally served to the Tenant and I cannot, therefore, conclude that he was served in accordance with section 89(1)(a) of the *Act*.

The Landlord submitted no evidence that the Application for Dispute Resolution was mailed to the Tenant and I cannot, therefore, conclude that he was served in accordance with section 89(1)(c) or 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 he was not served in accordance with section 89(1)(e) of the *Act*.

The Landlord submitted no evidence to cause me to conclude that the 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*. While I accept the testimony that the Landlord noticed they had been removed from the door the following day, I have no evidence to show that they were removed by the Tenant.

### Conclusion

As the Landlord has failed to establish that the Tenant was served with the Application for Dispute Resolution and the Notice of Hearing in accordance with section 89(1) of the *Act*, I dismiss the Application for Dispute Resolution with leave to reapply. The Landlord retains the right to file another Application for Dispute Resolution in regards to this matter.

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: August 02, 2012.

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Residential Tenancy Branch