



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

ET

### **Introduction**

This hearing was convened in response to an application by the landlord to end the tenancy early and obtain an Order of Possession as per Section 56 of the Residential Tenancy Act (the Act).

The landlord appeared in the hearing and also made prior submissions.

Despite the tenant having been served with the application for dispute resolution and notice of hearing by *registered mail* in accordance with Section 89 of the Residential Tenancy Act (the Act) neither the tenant nor a representative appeared in the hearing. The landlord testified that the tenant has been, and is currently, incarcerated in jails pending mental health evaluation and subsequent hearing in respect to several charges. The landlord testified and provided evidence they sent the tenant the Notice of Hearing by registered mail to the tenant's address within the period of the tenant's incarceration. The landlord also testified they phoned the tenant's lawyer notifying them of this hearing.

### **Issues to be Decided**

Has the tenant been duly served and notified and made aware of this hearing in satisfaction of the Act and principles of natural justice?

### **Background and Evidence**

According to the evidence submitted by the landlord the tenant was served with the Notice of Dispute Resolution by registered mail sent to the rental unit while the tenant was in jails awaiting assessment and disposition. The evidence is that the tenant remains in jails for an undetermined time following at least 2 serious incidents and multiple charges pending.

### **Analysis**

**Section 89(2)** of the Act, in part, states as follows:

**89** (2) An application by a landlord under section 55 [*order of possession for the landlord*], 56 [*application for order ending tenancy early*] or 56.1 [*order of possession: tenancy frustrated*] must be given to the tenant in one of the following ways:

- (b) by sending a copy by registered mail to the address at which the tenant resides;

**Section 90** of the Act, in part, states as follows (emphasis mine)

**90** A document given or served in accordance with section 88 [*how to give or serve documents generally*] or 89 [*special rules for certain documents*] is deemed to be received as follows:

- (a) if given or served by mail, on the 5th day after it is mailed

Despite the landlord's evidentiary submissions in this matter, the presumption of service as afforded by Section 90 of the Act (the deeming provisions for service), has been rebutted by the landlord's evidence that the tenant is not currently occupying the rental unit as they are in jail, and as a result, on balance of probabilities, has not been notified in accordance with the provisions of the Act or the principles of natural justice, and is thus unaware of the landlord's application.

As a result, I find the tenant was not served with the Application and Notice of Hearing in respect to this matter, and **I hereby dismiss** the landlord's application for an early end to the tenancy and Order of Possession, with leave to reapply. It is available to the landlord, and they are at liberty, to provide the tenant with a valid Notice to End Tenancy and to serve the tenant with any Notice of Hearing which may result.

**This Decision is final and binding on both parties.**

*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: October 30, 2012

---

Residential Tenancy Branch