



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

### **Dispute Codes:**

MNR, OPR, FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on the Notice to End Tenancy for Unpaid Rent dated October 23, 2012 and a monetary order for rent owed.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on November 1, 2012 the tenant did not appear.

At the outset of the hearing the landlord advised that the tenant had vacated the rental unit on November 4, 2012. Therefore the portion of the landlord's application seeking an Order of Possession is now moot.

However, the landlord is still seeking a monetary order for the rental arrears.

### **Preliminary Issue**

The landlord's testimony was that, on November 1, 2012, the landlord sent the hearing package by registered mail, addressed to the tenant at the subject address and the applicant provided a Canada Post tracking number to confirm this service by registered mail.

Section 90 of the Residential Tenancy Act determines that a document sent by registered mail is deemed to have been served in 5 days.

In this instance I find that the service date for the Notice of Hearing which was sent by registered mail on November 1, 2012 was deemed under section 90 of the Act to be served on November 6, 2010. Because the tenant had already vacated the unit prior to that date, I find that the documents were served to an address where the tenant no longer resided.

The burden is on the Applicant to prove that the service was within the above provisions. As the landlord served the documents to an address that was not the tenant's current residence, I find that the mailing of the package would not meet the

definition of service by registered mail to the “*address at which the person resides*”. I find that there was no valid service of the hearing package in compliance with the Act.

Given the above, I find that the matter under dispute cannot proceed because the landlord has not proven that the tenant was served. Accordingly, I dismiss this application with leave to reapply at a later date should the landlord wish to do so, once a service address has been located for the respondent.

### **Conclusion**

Based on evidence and testimony, I hereby dismiss this application with 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: December 05, 2012.

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Residential Tenancy Branch