



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") for an order of possession for the rental unit due to unpaid rent, a monetary order for unpaid rent and to recover the filing fee.

The landlords appeared; the tenant did not appear.

The landlord provided oral evidence that they served the tenant with the Application for Dispute Resolution and Notice of Hearing (the "Hearing Package") by registered mail on December 17, 2012. The landlord verbally supplied the tracking number for the registered mail.

Section 90 of the Act states that documents served in this manner are deemed delivered five days later. Thus the Hearing Package was deemed to have been delivered on December 22, 2012.

I will address my findings on the service of the Notice of Hearing later in this Decision.

The landlord was provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

*Preliminary Issue*-The landlord stated that the tenant vacated the rental unit and they were not certain when she vacated; however, the landlord became aware of the tenant having vacated the rental unit by December 20, 2012.

I therefore amended their application to exclude a request for an order of possession due to unpaid rent and the hearing proceeded on the landlords' monetary claim.

Issue(s) to be Decided

Is the landlord entitled to a monetary order and to recover the filing fee?

Background and Evidence

The evidence shows that this tenancy began on March 1, 2012, that monthly rent was \$850.00 and the tenant paid a security deposit of \$425.00 at the beginning of the tenancy.

The landlord gave evidence that on December 3, 2012, the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by posting it on the tenant's door and via registered mail, listing unpaid rent of \$1000.00 as of December 1, 2012. The effective vacancy date listed on the Notice was December 12, 2012. Section 90 of the Act states that documents served by posting on the door are deemed delivered three days later. Thus the tenant was deemed to have received the Notice on December 6, 2012, and the effective move out date is automatically changed to December 16, 2012.

The Notice informed the tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explained the tenant had five days to dispute the Notice.

The landlord stated that the tenant made no further payment of rent and as of the date of the hearing, the tenant owed \$1000.00 in unpaid rent through December 2012, and loss of revenue for January 2013 in the amount of \$850.00, for a total amount of \$1850.00.

I have no evidence before me that the tenant applied to dispute the Notice.

Analysis

Based on the oral and written evidence and on a balance of probabilities, I find as follows:

Section 89 of the Residential Tenancy Act requires that an application for dispute resolution be served upon the respondent (the tenant in this case) by leaving it with the person, by sending a copy by registered mail to the address at which the person resides or if a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant.

In the case before me, as the tenant failed to pay rent or dispute the Notice, the tenancy was conclusively ended by operation of the landlord's Notice on the effective date of the Notice, December 16, 2012.

The landlord served the Hearing Package to the tenant via registered mail to the dispute address on December 17, 2012 and the tenant would have been deemed to have received it on December 22, 2012 if the tenant was still in possession of the rental unit.

As the landlord provided evidence that the rental unit was vacant on December 20, 2012, I therefore, on a balance of probabilities and insufficient evidence by the landlord, cannot conclude that the tenant was served with the Notice of Hearing and Application for Dispute Resolution as required by Section 89 of the Act.

I therefore dismiss the landlord's application, with leave to reapply.

Leave to reapply does not extend any applicable time limitation deadlines.

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: January 17, 2013

