



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

OPR, MNR, MNDC, FF

### Introduction

This hearing was convened in response to an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows.

1. A Monetary Order for unpaid rent - Section 67;
2. An Order of Possession for unpaid rent – Section 55
3. An Order to recover the filing fee for this application - Section 72.

The landlord attended the conference call hearing. The tenant did not. The landlord testified that the tenant still resides in the unit. The landlord provided evidence that they served the Notice of Hearing package by delivering it under the door of the subject rental unit. The landlord did not employ any other means to locate the tenant.

Section 89 of the Act states as follows – **emphasis mine**

### **Special rules for certain documents**

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:

- (a) by leaving a copy with the tenant;
- (b) by sending a copy by registered mail to the address at which the tenant resides;
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
- (d) by **attaching** a copy to a door or other conspicuous place at the address at which the tenant resides;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

Section 89 of the Act is deliberately designed to give credibility to the presumption of service if a party is served in accordance with the ways listed. I find the landlord's method of serving the tenant to be ambiguous and, on a balance of probabilities, inconclusive, and therefore, unreliable – and not within the deliberate and strict provisions established in the Act. As a result, I am not satisfied the tenant was served with notice of this hearing pursuant to Section 89 of the Residential Tenancy Act.

Therefore, I **dismiss** the landlord's application, but I do so, with leave to reapply. None of the potential merits of this application were heard.

### **Conclusion**

The landlord's application **is dismissed**, 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: January 31, 2013

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Residential Tenancy Branch

