



# 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 dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 9:48 a.m. in order to enable her to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that he served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) by placing it under the tenant's door on April 3, 2013 and by sending the tenant a copy of the 10 Day Notice by email. The landlord testified that he served the tenant with a copy of his dispute resolution hearing package by placing it under the tenant's door on April 17, 2013.

### Issues(s) to be Decided

Has the landlord served documents to the tenant in accordance with the *Act*? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

This six-month fixed term tenancy began on April 1, 2013. Monthly rent is set at \$1,000.00, payable in advance by the first of each month. The landlord holds the tenant's \$500.00 security deposit paid on March 21, 2013.

The landlord applied for an Order of Possession on the basis of the 10 Day Notice, which identified \$750.00 as owing as of April 3, 2013. The landlord testified that he

received a \$250.00 payment towards the tenant's April 2013 rent on April 3, 2013, and a further \$500.00 payment on April 17, 2013. The landlord testified that he has also received a \$635.58 shelter assistance cheque on the tenant's behalf from the Ministry responsible for providing income assistance by May 2, 2013. He entered sworn oral testimony and written evidence that he accepted the Ministry's cheque for occupancy only. The landlord testified that \$50.00 remains owing for the tenant's April 2013 rent and \$364.42 remains owing for her May 2013 rent.

#### Preliminary Issue - Service of Documents

Section 89(1) of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution for a monetary Order.

*89(1) An application for dispute resolution,...when required to be given to one party by another, must be given in one of the following ways:*

- (a) by leaving a copy with the person;...*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;...*

Section 89(2) of the *Act* outlines the methods whereby an application for an order of possession can be served to a tenant.

*(2) An application by a landlord under section 55 [order of possession for the landlord],... 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;...*

At the hearing, I advised the landlord of my finding that he has not served the tenant in a manner required by section 89(1) of the *Act*. For this reason, I cannot consider the landlord's application for a monetary Order. As the landlord has also not served the tenant as required by section 89(2) of the *Act*, I also informed the landlord that I cannot consider his application for an Order of Possession. I am not satisfied that the tenant was properly served with any portion of the landlord's application for dispute resolution.

In explaining why I could not consider the landlord's current application for dispute resolution, I also informed the landlord that his 10 Day Notice was not served in accordance with the provisions of section 88 of the *Act*. Section 88 of the *Act* reads in part as follows:

**88** *All documents, other than those referred to in section 89 [special rules for certain documents], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:*

*(a) by leaving a copy with the person;...*

*(c) by sending a copy by ordinary mail or registered mail to the address at which the person resides...*

*(d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;*

*(e) by leaving a copy at the person's residence with an adult who apparently resides with the person;*

*(f) by leaving a copy in a mail box or mail slot for the address at which the person resides...*

*(g) by attaching a copy to a door or other conspicuous place at the address at which the person resides...;*

*(h) by transmitting a copy to a fax number provided as an address for service by the person to be served;*

*(i) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];*

*(j) by any other means of service prescribed in the regulations...*

In addition, I also advised the landlord that his sworn testimony that he accepted the tenant's \$500.00 payment for rent on April 17, 2013 reinstated this tenancy as of that

date. I advised the landlord that his actions in doing so cancelled his 10 Day Notice issued on April 3, 2013.

As the landlord's application for an Order of Possession has not been served to the tenant in a method required under section 89(2) of the *Act* and for the above reasons, I dismiss the landlord's application for an Order of Possession based on the landlord's 10 Day Notice of April 3, 2013 without leave to reapply. The landlord's 10 Day Notice of April 3, 2013 is of no legal effect. If there is rent that remains owing since April 17, 2013, the landlord is at leave to reissue a new 10 Day Notice and serve it to the tenant in a way prescribed under section 88 of the *Act*.

As the landlord's application for a monetary Order has not been served to the tenant in a method required under section 89(1) of the *Act*, I dismiss the landlord's application for a monetary Order with leave to reapply.

#### Conclusion

I dismiss the landlord's application for an Order of Possession based on the 10 Day Notice of April 3, 2013 without leave to reapply. This tenancy continues.

I dismiss the landlord's application for a monetary Order with leave to reapply.

As the landlord has been unsuccessful in his application, I dismiss his application to recover his filing fee from the tenant without 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: May 13, 2013

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Residential Tenancy Branch

