



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, OPR, MNR, FF, O

### Introduction

This hearing was originally scheduled for 1:30 p.m. on this date to deal with a tenant's application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent given to the tenant on August 16, 2013. The tenant did not appear at the hearing despite leaving the teleconference call open for at least 15 minutes. The landlord was present at the commencement of the hearing and stated that she was prepared to deal with the 10 Day Notice issued on August 10, 2013. The landlord also orally requested an Order of Possession be provided to her. As the tenant did not appear at the hearing he requested and the landlord did, I dismissed his Application without leave to reapply and considered the landlord's request for an Order of Possession.

The landlord filed an Application for an Order of Possession and Monetary Order for unpaid rent on September 16, 2013 and the landlord's Application was joined with the tenant's Application to be heard on this date. As the tenant was not in attendance at the hearing I enquired about service of the landlord's Application for Dispute Resolution upon the two tenants she named in her Application. The landlord testified that two tenants are named on the tenancy agreement and that the hearing documents for both tenants were sent in a single package to the tenants using Canada Post's Xpresspost service. Tracking information showed that Canada Post left a notice card at the rental unit. Someone with the notice card came in to the postal outlet and stated the recipients did not reside at that rental unit address. The landlord is of the position that the tenants are still in possession of the rental unit and are avoiding service.

Section 89 of the Act provides for ways a party must serve the other party with an Application for Dispute Resolution. Where there is more than one respondent, as there is with the landlord's Application for Dispute Resolution, the applicant must serve each respondent with a copy of the hearing documents. Based upon the landlord's submissions I am not satisfied the landlord sufficiently served each named respondent. Since neither of the named respondents accepted or signed for the hearing package I am unable to conclude that at least one of the tenants is in receipt of the landlord's

hearing package. Therefore, I dismissed the landlord's application with leave to reapply.

The landlord also pointed out that the tenant served her with a Notice of Hearing for a hearing set for October 22, 2013. The landlord stated that she was not served with the tenant's Application for Dispute Resolution for that hearing. The landlord enquired as to whether that hearing would be cancelled given the outcome of today's hearing. I provide the following response to that enquiry. I do not have the authority to cancel a dispute resolution hearing that has been scheduled without the consent of the applicant. Accordingly, the hearing set for October 22, 2013 will remain scheduled unless the tenant cancels that hearing. If the tenant does not cancel that hearing, the tenant will bear the burden to prove that he served the landlord with a copy of his Application for Dispute Resolution at that hearing.

#### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

#### Background and Evidence

The tenant filed an Application for Dispute Resolution to cancel a 10 Day Notice to End Tenancy for Unpaid Rent received on August 16, 2013. The tenant's request to cancel that 10 Day Notice has been dismissed due to the tenant's failure to appear at the hearing scheduled to deal with the Notice.

#### Analysis

Section 55 of the Act provides that an Order of Possession shall be granted to a landlord where:

- The tenant files to cancel a notice to End Tenancy and the application is dismissed; and,
- The landlord orally requests an Order of Possession during the scheduled hearing.

I am satisfied that all of the above criteria have been met and, as required under section 55 of the Act, I provide the landlord with an Order of Possession as requested by the landlord during the hearing. With the landlord's copy of this decision, I provide the landlord with an Order of Possession effective two (2) days after service.

Conclusion

The tenant's application to cancel a 10 Day Notice issued on August 16, 2013 has been dismissed and the landlord has been provided an Order of Possession effective two (2) days after service pursuant to section 55 of the Act.

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 02, 2013

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Residential Tenancy Branch

