



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Capreit LP  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

For the tenant – MT, CNR, RR

For the landlord – OPR, MNR, MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied for more time to file an application to cancel a Notice to End Tenancy; to cancel a Notice to End Tenancy for unpaid rent; and for an Order for the tenant to reduce rent for repairs, services or facilities agreed upon but not provided. The landlord applied for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenant's security deposit; and to recover the filing fee from the tenant for the cost of this application.

At the outset of the hearing the parties advised that the tenant is no longer residing in the rental unit, and therefore, the landlord withdraws the application for an Order of Possession.

Both parties attended the hearing. The landlord testifies that the tenant was served the hearing documents by posting them to the tenant's door on October 09, 2013. The landlord also testified that the tenant had vacated the rental unit and left the keys in the mailbox on October 04, 2013. The tenant testifies that they returned the keys on or about September 29, 2013.

### Preliminary Issues

As the tenant has vacated the rental unit I will not deal with the tenant's application because the tenant has moved from the rental unit and consequently the tenant's application no longer has any merit.

### Issues to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to an Order to keep the security deposit?

### Analysis

Sections 88 and 89 of the *Residential Tenancy Act (Act)* determine the method of service for certain documents. The landlord has applied for a Monetary Order which requires that the landlord serve the tenant as set out under Section 89(1). As the landlord posted the application and Notice of Hearing to the tenant's door, this method of service is not acceptable under section 89(1) of the *Act*.

Furthermore, as the tenant had vacated the rental unit on or about September 29, 2013 the landlord cannot serve a tenant to an address in which the tenant no longer resides. I must be satisfied that the rights of all parties have been upheld by ensuring the parties have been given proper notice to be able to defend their rights. In the absence of proof that the hearing documents have been served in accordance with s. 89 of the *Act*, I must dismiss the landlord's application with leave to reapply.

At the hearing the tenant provided a forwarding address for service to the Arbitrator and the landlord; therefore the landlord is now considered to have received the forwarding address in writing as of today **October 31, 2013** and may re-apply for Dispute

Resolution using the tenant's forwarding address provided at this hearing for service of any new hearing documentation.

Conclusion

I find that the landlord is not entitled to monetary compensation due to incorrect service of the hearing documents. Therefore the landlords claim is dismissed with leave to reapply.

The tenant's application is dismissed 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: October 31, 2013

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Residential Tenancy Branch

