



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

OPR, MNR, MNSD, MND, FF

### Introduction:

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, a monetary Order for damage to the rental unit; to retain all or part of the security deposit, and to recover the fee for filing an Application for Dispute Resolution.

### Issue(s) to be Decided:

Is the Landlord entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent; and to keep all or part of the security deposit?

### Background and Evidence:

The Landlord stated that the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant, via registered mail, on September 25, 2013. The Landlord submitted Canada Post documentation that corroborates this statement.

The Landlord stated that although she knows where the Tenant has moved. The Tenant did not provide this address as a forwarding address and the Application for Dispute Resolution and Notice of Hearing were not served to that address. She stated that the documents were served to a mail box in Merritt, B.C. and that she located this mailing address on mail addressed to the Tenant and on a medical card in the name of the Tenant which had been left at the rental unit

The Tenant was provided with the opportunity to check the Canada Post website to see if she could determine whether the mail was delivered to the Tenant. The Tenant stated that she was unable to access the Canada Post website on her computer and she is unable to retrieve this information over the telephone.

### Analysis

The purpose of serving the Application for Dispute Resolution and the Notice of Hearing to a tenant is to notify the tenant that a dispute resolution proceeding has been initiated and to give them the opportunity to respond to the claims being made by the landlord. When a landlord files an Application for Dispute Resolution in which the landlord has applied for a monetary Order, the landlord has the burden of proving that the tenant was served with the Application for Dispute Resolution in compliance with section 89(1) of the *Residential Tenancy Act (Act)*.

Section 89(1) of the *Act* stipulates, in part, that a landlord must serve a tenant with an Application for Dispute Resolution in one of the following ways:

- (a) by leaving a copy with the person;
- (c) by sending a copy by registered mail to the address at which the person resides;
- (d) by sending a copy by registered mail to a forwarding address provided by the tenant;
- or
- (e) as ordered by the director under section 71 (1).

Based on the testimony of the Landlord, I find that the Tenant was not personally served with the Application for Dispute Resolution. I therefore find that he was not served in accordance with section 89(1)(a) of the *Act*.

In communities where mail is delivered to a mail box, rather than a street address, I would find, in some circumstances, that documents have been served in accordance with section 89(1)(c) of the *Act* if the mail was sent to a mail box that the Tenant is using as his current residential mailing address. In these circumstances I find that the Landlord submitted insufficient evidence to establish that the Tenant is currently using the mail box on the documents found at the rental unit, as it is entirely possible that the Tenant stopped using that mail box when he moved out of the rental unit or sometime prior to moving out of the rental unit. I therefore cannot conclude that he was served in accordance with section 89(1)(c) of the *Act*.

Based on the testimony of the Landlord, I find that the Tenant did not provide the Landlord with a forwarding address. I therefore find that he was not served in accordance with section 89(1)(d) of the *Act*.

When a landlord files an Application for Dispute Resolution in which the landlord has applied for an Order of Possession, the landlord has the burden of proving that the tenant was served with the Application for Dispute Resolution in accordance with section 89(2) of the *Act*.

Section 89(2) of the *Act* stipulates, in part, that a landlord must serve a tenant with an Application for Dispute Resolution 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; or

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

As previously noted, there is no evidence that the Application for Dispute Resolution was served in accordance with sections 89(2)(a), or 89(2)(b) of the *Act*.

As there is no evidence that the Application for Dispute Resolution was delivered to the Tenant's current residence, I cannot conclude that the document was served in accordance with sections 89(2)(c) or 89(2)(d) of the *Act*.

There is no evidence that the director authorized the Landlord to serve the Application for Dispute Resolution to the Tenant in an alternate manner, therefore I find that he was not served in accordance with section 89(1)(e) or 89(2)(e) of the *Act*.

The Landlord submitted no evidence to cause me to conclude that the Tenant received the Application for Dispute Resolution, therefore I cannot conclude that the Application has been sufficiently served pursuant to sections 71(2)(b) or 71(2)(c) of the *Act*.

### Conclusion

As I am not satisfied that the Tenant received the Application for Dispute Resolution and Notice of Hearing, I dismiss the Application for Dispute Resolution with leave to reapply. The Landlord is at liberty to file another Application for Dispute Resolution in regards to these matters

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: November 04, 2013

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Residential Tenancy Branch