



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR

### Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to subsection 55(4) of the *Residential Tenancy Act* (the “Act”). The landlord’s Application for Dispute Resolution seeks an order of possession and a monetary order.

### Issue(s) to be Decided

Has the landlord served the Direct Request Proceeding documents including a copy of the application for dispute resolution in accordance with section 89 of the Act?

If so, is the landlord entitled to an order of possession and a monetary order for unpaid rent pursuant to sections 55 and 67 of the Act?

### Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding (“Proof of Service”);
- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on 9 May 2014, indicating a monthly rent of \$1,100.00 due on the 1st day of the month for a tenancy commencing on 15 May 2014;
- A Monetary Order Worksheet showing the rent unpaid during this tenancy; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”) was delivered personally to the tenant on 21 September 2014, with a stated effective vacancy date of 2 October 2014, for \$1,100.00 in unpaid rent.

The landlord also included a copy of the tenant's written acknowledgement of personal receipt of the 10 Day Notice on 21 September 2014.

The 10 Day Notice states that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end. The tenant did not apply to dispute the Notice to End Tenancy within five days from the date of service.

The Proof of Service indicates that the landlord's agent served the tenant by attaching a copy on the door or other noticeable place. The agent notes on the Proof of Service that, "*Tenant avoiding service x3. Left in mailbox, notified boyfriend in person of location; bf refused to witness.*"

### Analysis

The landlord has applied for both a monetary order and an order of possession. Subsections 89(1) and 89(2) of the Act determine the method of service for documents for applications for monetary orders and orders of possession respectively:

- 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;
  - ..
  - (c) by sending a copy by registered mail to the address at which the person resides...;
  - (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the 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;...

Service by mailbox is contemplated by section 88 of the Act, which also contemplates service "by attaching a copy to a door or other conspicuous place". Accordingly, as this method of delivery was contemplated by the legislative drafters, I conclude it is excluded from the meaning of "conspicuous place" within paragraph 89(2)(d). As I

understand the landlord's evidence, the "boyfriend" was notified that the notice was in the mailbox. If a copy of the Notice for Direct Request Proceeding had been left with the "boyfriend" that may have been sufficient for me to consider the order of possession on its own; however, the "boyfriend" was not left with a copy, but merely told where the copy was located. Accordingly, I find that the Notice for Direct Request Proceeding was not served to the tenant pursuant to section 89 of the Act.

Based on the written materials provided to me by the landlord, I find that the tenant has not been served with the Direct Request Proceeding documents within the prescribed methods contained in the Act.

As the landlord has failed to prove service, there is no need to consider the second issue.

### Conclusion

For the reasons set out above I dismiss the landlord's application with leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: October 23, 2014

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Residential Tenancy Branch