



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Manufactured Home Park Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 48;
- a monetary order of \$1,970.00 for unpaid rent pursuant to section 60; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 65.

The landlord and his agent attended the hearing and were given a full opportunity to be heard, to present their sworn testimony and to make submissions. The hearing, scheduled for 3:00 p.m. continued until 3:49 p.m. The tenant did not attend.

### Issues to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### Preliminary Issue: service of documents, notices

The landlord's agent testified that on September 5, 2014, he and the landlord personally served the tenant with the 10 Day Notice to End Tenancy (the 10 Day Notice). The landlord submitted, by fax, after the hearing, a copy of one page of the 10 Day Notice. A proof of service form was not provided by the landlord in this matter. On the basis of the landlord's agent's undisputed sworn testimony, I am satisfied, on a balance of probabilities that the tenant was served with the 10 Day Notice pursuant to section 88 of the Act.

The landlord's agent ultimately testified that he and the landlord served the tenant with the dispute resolution package on October 10, 2014 by again personally serving the tenant at his home. His testimony wavered with respect to the service of the dispute resolution documents. Initially, the landlord's agent stated this package was served on October 1, 2014. When it was noted that the application had not been filed until October 6, 2014, the landlord's agent provided another date; October 6, 2014. Later, the landlord's agent testified that the package had been personally served on October 10, 2014. The landlord also testified that the tenant had vacated the residence on or before October 1, 2014. When questioned with respect to the service of this package, the landlord's agent testified that he believed the tenant was at the residence on the day of service to retrieve belongings.

At the hearing, I advised the landlord and his agent that I was not satisfied that he had sufficiently proved service to the tenant with the Notice of Hearing for Dispute Resolution. Therefore, the tenant may not have been aware of this dispute resolution hearing. For this reason, I advised the landlord and his agent that I could not consider the landlord's application. However, I allowed the landlord an opportunity, post-hearing, to submit documentary evidence by fax with respect to service of these documents. He did not do so. On the basis of the evidence provided, I cannot be satisfied that the tenant was served with notice of this application as required by the *Act*.

### Analysis- Service of Documents

Section 89 of the Act sets out how an Application for Dispute Resolution may be served:

#### **Special rules for certain documents**

- 89** (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, 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;
  - (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

(2) An application by a landlord under section 55 [*order of possession for the landlord*], 56 [*application for order ending tenancy early*] or 56.1 [*order of possession: tenancy frustrated*] 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;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

The tenant did not appear at this hearing. The evidence of the landlord and his agent does not sufficiently prove service to the tenant with the Application for Dispute Resolution. I therefore dismiss the landlord's application with leave to reapply.

### Conclusion

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 Section 9.1(1) of the *Manufactured Home Park Tenancy Act*.

Dated: December 4, 2014

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Residential Tenancy Branch

