



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction and Preliminary Matters

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act ("Act"). The landlord applied for an order of possession for the rental unit due to unpaid rent, a monetary order for unpaid rent, and for recovery of the filing fee paid for this application. The landlord stated that the tenants had already vacated the rental unit.

The landlord attended the telephone conference call hearing; the tenants did not attend.

At the beginning of the hearing, I asked the landlord how each tenant was served with his application and hearing package, which included a notice of this hearing, and he replied they were sent a fax transmission. When informing the landlord this was not proper service of his application as required by the Act, the landlord then stated that he mailed the documents to his brother-in-law, and the brother-in-law handed the documents to the tenants.

In response to my question, the landlord could not provide the date the tenants were served and there was no affidavit from the brother-in-law confirming the date, time, and method of service. I then asked the landlord if he would like to provide a telephone number so that I could call his brother-in-law and the landlord did so.

When calling the brother-in-law during the hearing, I received the brother-in-law's voice mail, but no answer. I note that it appeared the brother-in-law attempted 2 times to call into the hearing, as his telephone number appeared on-screen, but no one responded.

### Analysis and Conclusion

Section 89(1) of the Act requires that an application for dispute resolution be served upon the respondent (the tenants in this case) by leaving it with the person, by sending

a copy by registered mail to the address at which the person resides or if a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant.

Section 3.5 of the Dispute Resolution Rules of Procedure (Rules) requires an applicant to be prepared to demonstrate to the satisfaction of the Arbitrator.

In this case, as the person who was said to have delivered the landlord's application and hearing package was not available for the hearing nor submitted an affidavit or written proof of the date and time he served the tenants, I was not satisfied that the tenants were served in accordance with the Act.

I therefore find that the landlord failed to submitted sufficient evidence that he complied with section 89(1) of the Act regarding service of his application to the respondents and, as a result, I dismiss the landlord's application, with leave to reapply.

Leave to reapply is not an extension of any applicable time limitation deadlines.

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: April 30, 2015

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Residential Tenancy Branch

