



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding DELANEY PROPERTIES LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR

### Introduction

This hearing was scheduled to address the landlord's application pursuant to section 55 of the *Residential Tenancy Act* ("the *Act*") for an Order of Possession.

### Preliminary Issue: Service

At the outset of this hearing, the landlord testified that she served a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") personally to "Person MS" on October 2, 2015. The landlord testified that the landlord's Application for Dispute Resolution was sent registered mail on November 5, 2015. Evidence of that mailing was not submitted for this hearing.

The landlord testified that there are a variety of different people occupying the rental unit and that Person MS is "in and out of jail all the time". That 10 Day Notice dated October 2, 2015 named the tenant as "The Estate of [Tenant DL]". The landlord testified that Tenant DL had resided in the rental unit and was the sole signatory of the tenancy agreement. She testified that Tenant DL had passed away in December 2014. The landlord testified that Person MS is Tenant DL's son and that he has continued to occupy the rental unit since Tenant DL's death.

Residential Tenancy Policy Guideline No. 12 provides the guidelines for proper service of documents under the *Residential Tenancy Act*. One method of service of documents under the *Act* is to personally serve a person. The guidelines state,

Where a landlord is personally serving a tenant, the landlord must actually hand a copy of the document to the tenant. ...

And, with respect to a tenant/respondent who has died,

Where a party makes an application for arbitration and the respondent has died, or where a party representing a person who has died (the "decedent") makes an application, the personal representative of the decedent's estate (collectively, the "estate") must be named and served. The personal representative may be either the person who has been named as executor in the decedent's will, or the person who has been appointed to administer the estate of a decedent who has not left a will, or a person named in an Order of Probate.

The proper manner of naming the estate is as follows: John Smith, Executor (or Administrator) of the Estate of Mary Jones, Deceased.

In this case, the landlord has chosen to address the documents for this hearing, both the 10 Day Notice and the Application for Dispute Resolution to "The Estate of [Tenant DL]" and "[Tenant DL], deceased", adding Person MS as a second Respondent to the Application.

Given the requirements under section 88, 89 and 90 of the Act as well as the further guidance of the Residential Tenancy Policy Guideline No. 12, **I find that the respondent has not been sufficiently served. Therefore, I find this application cannot proceed. I dismiss the landlord's application with leave to reapply.**

#### Preliminary Issue: Definition of Tenant

As for additional evidence provided by the landlord, I note that the landlord submitted a letter dated October 17, 2014 as evidence in this hearing. The letter stated,

It is agreed by [Tenant DL] and [Person MS] that [Person MS] will be living in [the rental unit] for a period of one and a half months, ending on November 30, 2014, no later. During this time [Person MS] is to have no visitors to the unit and if there is any illegal activity or problems arising at the complex both [Tenant DL] and [Person MS] will have to vacate the unit, her security deposit will be forfeited to the owner and they will both be banned from the property.

The landlord also submitted a document from a third party ("the Ministry") dated October 17, 2014 as evidence. That document indicated that a third party paid a portion of the rent at the rental unit address. Another document dated January 5, 2015 indicated that the Ministry paid the entire rent for the rental unit on behalf of Person MS.

The landlord argued that Person MS be considered a tenant and subject to the conditions of the *Residential Tenancy Act*. I refer to the definitions under the *Act*,

**"tenancy"** means a tenant's right to possession of a rental unit under a tenancy agreement;

**"tenancy agreement"** means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

**"tenant"** includes

- (a) the estate of a deceased tenant, and
- (b) when the context requires, a former or prospective tenant.

At this time, the landlord has not provided me with sufficient evidence to show that Person MS is a tenant under the *Residential Tenancy Act*.

#### Conclusion

**I dismiss the landlord's application for an order of possession 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 *Residential Tenancy Act*.

Dated: December 21, 2015

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Residential Tenancy Branch

