



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

OPL MND FF

### **Introduction**

This hearing was convened pursuant to the landlord's application for an order of possession and a monetary order for damages to the unit and to recover the filing fee.

The landlord and the tenant participated in the teleconference hearing.

#### *Preliminary Issue – Service of Documents*

In the hearing the tenant stated they did not receive the Notice to End tenancy for Landlord's Use of Property as purported by the landlord.

The landlord acknowledged they served the tenant with the Notice to End by placing it on the tenant's doorstep and did not possess proof of such service.

Under **Section 88** of the Act it states as follows:

#### **How to give or serve documents generally**

**88** All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served 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 ordinary mail or 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 ordinary mail or registered mail to a forwarding address provided by the tenant;

(e) by leaving a copy at the person's residence with an adult who apparently resides with the person;

(f) by leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;

**(g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;**

(h) by transmitting a copy to a fax number provided as an address for service by the person to be served;

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

(j) by any other means of service prescribed in the regulations.

While I may accept that placing a Notice to End on a rental unit doorstep may qualify as a “conspicuous place at the address at which the person resides”, I find that given the tenant’s testimony they did not receive the Notice to End, the landlord has the burden to prove they did as they claim.

I found the landlord did not provide sufficient evidence they served the tenant with the Notice to End, and as a result I must dismiss the landlord’s application for an Order of Possession, with leave to reapply.

The tenant still resides in the rental unit and as the tenancy continues the landlord’s application for damage to the unit is premature. I therefore dismiss the landlord’s monetary claim for damage, with leave to reapply.

## **Conclusion**

It must be noted that both parties were apprised of the methods of service prescribed by Section 88 of the Act.

It must further be noted that the parties were apprised that if the landlord seeks to make necessary repairs to the unit due to damage, the tenant cannot unreasonably refuse to allow the landlord to make such repairs. In addition the parties were apprised that the landlord may only seek compensation for damages if the damage is the result of the tenant’s doing and not reasonable wear and tear.

The application for an Order of Possession is dismissed.

The landlord may serve the tenant with a new Notice to End tenancy.

The landlord's monetary application is dismissed, 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: June 29, 2016

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Residential Tenancy Branch