



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR MNR MNDC FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for an Order of Possession for Unpaid Rent pursuant to section 55; a monetary order for unpaid rent and other damage or loss pursuant to section 67; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 11:33 in order to enable the tenant to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing with a translator/assistant and 1 witness. The landlord, his witness and his assistant were given a full opportunity to be heard, to present sworn testimony, and to make submissions.

### Preliminary Issue: Service

The landlord, his translator/representative ("landlord RN") and his witness ("Witness BM") were given several opportunities to provide the details of service of this application as well as to provide details with respect to the details of their application. Landlord RN provided evidence that Witness BM and the landlord served *someone* at the tenant's rental unit. They were unable to provide the date despite their evidence that the police were called on this occasion. Witness BM testified that, ultimately, the police served the evidence to the tenant. However, the landlord was unable to provide specifics with respect to the date that the police attended or any information to assist in confirming service of the landlord's Application for Dispute Resolution ("ADR") to the tenant.

During Witness BM's testimony, he testified that the police placed the landlord's ADR on the tenant's rental unit door, that the police handed the notice to a person who answered the door that he either posted or handed the notice. Again, Witness BM could not provide a date for any attempted service.

The evidence regarding service of documents in this matter was extremely unclear. It was also unclear whether, at any given time, the landlord, his assistant or his witness were providing evidence with respect to the service of the 10 Day Notice to End Tenancy in this matter or the Application for Dispute Resolution. Based on the testimony at this hearing, it seems that both may have been served to the tenant at the same time and date. There was no documentary evidence submitted by the landlord with respect to service of the Notice to End Tenancy; the Application for Dispute Resolution or any other materials for this hearing.

As the landlord did not submit any documentary evidence for this hearing that could assist in the recall or proof with respect to the service of the documents to notify the tenant of this application and hearing, and the tenant did not attend this hearing, I am unable to determine whether the tenant was sufficiently served with the ADR for this hearing. Based on the landlord testimony, it did not appear that he or his witness were certain of the dispute resolution process regarding service of documents and proof of service.

Proper service of documents is essential to the Residential Tenancy Dispute Resolution process. Service of documents is restricted by timelines and methods of service to underscore its importance. It is essential that a party be able to prove that they have sufficiently served the documents for a Residential Tenancy Dispute Resolution hearing.

Residential Tenancy Policy Guideline No. 12, with respect to the terms of service at section 88 to 90 in the *Act* states that, when the respondents (in this case two tenants) do not appear at a Dispute Resolution hearing, **the applicant must be prepared to prove service under oath**. The tenant provided uncertain testimony as to the details of service, particularly the date of service of the ADR and Notice of Hearing.

Prior to considering the details of the applicant's claim, I must be satisfied that the landlord/applicant sufficiently served the other party, allowing that party an opportunity to know the case against them and attend the dispute resolution hearing.

Given the lack of detail and certainty in providing evidence with respect to service, I find that the landlord was unable to prove that the tenant was served with the dispute resolution documents and were therefore aware of this dispute resolution hearing. Therefore, I must dismiss the landlord's application.

### Conclusion

I dismiss the landlord's application without 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: August 15, 2016

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Residential Tenancy Branch