



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPL, OPR, MNR, FF  
                             CNL, OLC, O

### Introduction

This hearing was convened by way of conference call concerning applications made by the landlords and by the tenants. The landlords have applied for an Order of Possession for landlord's use of property, and have filed an amended application claiming an Order of Possession and a monetary order for unpaid rent or utilities.

The tenants applied for an order cancelling a notice to end the tenancy for landlord's use of property and for an order that the landlords comply with the *Act*, regulation or tenancy agreement. The tenants' application was heard on July 22, 2016, a Decision was rendered by the director on July 31, 2016, and the landlords applied for this Review Hearing. The Decision made with respect to the Review Hearing also directed that the landlords' application be joined to be heard with this Review Hearing.

One of the named landlords attended the hearing and gave affirmed testimony, however the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and no other participants joined the call. The landlord testified that the Landlord's Application for Dispute Resolution and notice of this hearing was served by posting them to the door of the rental unit on August 4, 2016. The landlord's amendment was served in the same manner on August 12, 2016.

The *Residential Tenancy Act* does not permit service of an application for dispute resolution claiming monetary compensation by posting to the door of the rental unit, but does allow for service in that manner for applications seeking an Order of Possession. Those sections state:

**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.

### **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*].

(Underlining added). Therefore, I dismiss the landlords' application for a monetary order for unpaid rent or utilities with leave to reapply. Similarly, since the landlords have not served the tenants with a copy of the Decision of the director to proceed with the review in accordance with Section 89(1) above, I cannot set aside or vary the Decision of the director dated July 31, 2016, and I hereby confirm it.

#### Issue(s) to be Decided

The issue remaining to be decided is:

- Are the landlords entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent?

#### Background and Evidence

The landlord testified that this month-to-month tenancy began on March 1, 2016 and a tenancy agreement has been provided naming 2 individuals as tenants. Rent in the amount of \$800.00 per month is payable on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$400.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is a basement suite and the landlords reside in the upper level of the home.

On August 4, 2016 the landlords served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by handing it to a person who apparently resides in the rental unit with the tenants, and one of the tenants named in the tenancy agreement was present at the time. A copy of the notice has been provided and it is dated August 4, 2016 and contains an effective date of vacancy of August 14, 2016 for \$1,600.00 unpaid rent that was due on August 8, 2016. No rent has been paid since the issuance of the notice, and the tenants have not served the landlords with an application for

dispute resolution disputing the notice. The tenants are currently in arrears of rent \$2,400.00 for the months of July, August and September, 2016.

### Analysis

I have reviewed the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the notice) and I find that it is in the approved form and contains information required by the *Residential Tenancy Act*. The *Act* states that once served, a tenant has 5 days to pay the rent in full, in which case the notice is of no effect, or to dispute the notice. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date contained in the notice. I also accept the undisputed testimony of the landlord that the tenants have not served the landlords with an application for dispute resolution disputing the notice and have not paid the rent. Therefore, I find that the tenants are conclusively presumed to have accepted the end of the tenancy and the landlords are entitled under the *Act* to an Order of Possession. Since the effective date of vacancy has passed, I grant the Order of Possession on 2 days notice to the tenants.

### Conclusion

For the reasons set out above, the Decision of the director dated July 31, 2016 is hereby confirmed.

The landlords' application for a monetary order for unpaid rent or utilities is hereby dismissed with leave to reapply.

I hereby grant an Order of Possession in favour of the landlords on 2 days notice to the tenants.

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: September 20, 2016

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Residential Tenancy Branch

