



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This is an application brought by the Landlord requesting an Order of Possession based on a Notice to End Tenancy for nonpayment of rent, and requesting a Monetary Order for \$10,400.00 and recovery of the \$100.00 filing fee.

The applicant testified that the respondent was served with notice of the hearing by posting the documents on the respondents door on September 22, 2016; however the respondent did not join the conference call that was set up for the hearing.

Pursuant to section 90 of the Residential Tenancy Act, documents posted on the door are deemed served three days after posting, and therefore it is my finding that the respondent has been properly served with notice of the hearing.

All testimony was taken under affirmation.

### Issue(s) to be Decided

At the beginning of the conference call, the applicant testified that the tenant has vacated the rental unit and he regained possession of the unit on November 5, 2016, and therefore an Order of Possession is no longer required.

The issue for me to decide therefore, is whether or not to issue a Monetary Order, and if so in what amount.

### Background and Evidence

The applicant testified that the tenant moved into this rental unit in February of 2015 and the monthly rent is \$800.00 due on the first of each month.

The applicant further testified that no security deposit or pet deposit was ever paid.

The applicant further testified that the tenant stop paying rent in August of 2015 and paid no rent for the months of September 2015 through to the end of the tenancy on November 5, 2016.

The applicant is therefore requesting a monetary order for the total outstanding rent.

### Analysis

Section 89 of the Residential Tenancy Act states:

**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*].

(3) A notice under section 94.21 [*notice of administrative penalty*] must be given in a manner referred to in subsection (1).

Therefore, although the application for the Order of Possession could be served by posting it on the door, the application for a Monetary Order is not considered served if posted on the door, and therefore I am unable to proceed with the landlord's monetary claim. The monetary claim will therefore be dismissed with leave to reapply.

I will however allow the landlords claim for recovery of the \$100.00 filing fee, because the tenant did not vacate the rental unit until after the landlord had applied for an Order of Possession, through dispute resolution.

Conclusion

As stated previously an Order of Possession is no longer required as the tenant has vacated.

The monetary portion of this application is dismissed with leave to reapply.

I have issued an Order for recovery of the filing fee, pursuant to section 72 of the Residential Tenancy Act, in the amount of \$100.00.

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: November 16, 2016

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Residential Tenancy Branch