



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- recovery of the filing fees for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the outset of the hearing the landlord testified that the tenant is no longer residing in the rental unit and therefore the landlord is not seeking an Order of Possession. The landlord's application for an Order of Possession is withdrawn.

The landlord testified that he personally served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") to the tenant at the rental unit on November 10, 2016. The tenant disputed that he had ever been served with the 10 Day Notice.

The landlord testified that he personally served the landlord's application for dispute resolution (the "Application") on the tenant at the rental unit. The landlord could not recall the date that he served the tenant. The tenant disputed that he had ever been served with the Application.

### Issue(s) to be Decided

Is the landlord entitled to monetary compensation for unpaid rent as claimed?  
Is the landlord entitled to recover the filing fee of this application from the tenant?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the claims and my findings are set out below.

The parties agreed on the following facts. This month to month tenancy began in October, 2015. There is no written tenancy agreement. The monthly rental amount is \$450.00 payable on the 1<sup>st</sup> of the month. The tenant testified that he vacated the rental unit on or about November 1, 2016.

The tenant testified that since leaving the rental unit he has not been back on the premises. The tenant denied having been served with either the 10 Day Notice or the landlord's Application. All three of the tenant's witnesses each gave evidence that they knew the tenant no longer resides in the rental unit. The witnesses all testified that they did not believe that the landlord could serve the tenant personally with either the 10 Day Notice or the Application at the rental unit.

The tenant testified that he learned of the time and date of the dispute resolution hearing by phoning the Residential Tenancy Branch on December 19, 2016. The tenant testified that he was initially alerted of the existence of the landlord's application by a neighbor who resides in the dispute address. The neighbor, RAC, was called as a witness and testified that he learned of the present hearing when looking for information regarding a separate dispute hearing before the Residential Tenancy Branch.

### Analysis – Service of Landlord's 10 Day Notice and Application

Section 89 of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution:

89(1) An application for dispute resolution,...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 document]...

Given the conflicting testimony regarding service of both the 10 Day Notice and the landlord's Application I must first turn to a determination of credibility. I have considered the testimonies of the parties and witnesses, their content and demeanor as well as whether it is consistent with the other evidence and circumstances of this tenancy.

Considered in its totality, I do not find the evidence presented by the landlord at all credible. The landlord's testimony was inconsistent, argumentative and elusive. The landlord stated throughout his testimony that he did not expect the tenant to attend the teleconference and thus had not prepared for the hearing. The landlord testified that the tenant had vacated the rental unit on or about the first of November. However, the landlord then testified that he personally served the tenant with the 10 Day Notice and application for dispute resolution at the rental unit later that month. I do not find the landlord's testimony in this regard consistent or credible. I place little weight on the Proof of Service form submitted into evidence by the landlord that was signed by the landlord's spouse as a witness to the alleged personal service. The landlord's spouse was not called as a witness, a fact I find instructive. Throughout his testimony the landlord repeatedly stated that he was not expecting the tenant to attend the hearing. I find it reasonable to surmise that a possible reason one would not expect the other party to attend a hearing would be if one had not properly served the other party with notice of the hearing.

I found the evidence given by the tenant and his three witnesses to be consistent, forthright and compelling. Each of the witnesses confirmed that the tenant was no longer residing in the rental unit, that they were unaware of the tenant ever revisiting the rental unit and did not believe that the tenant could have been served with either the 10 Day Notice or the application for dispute resolution at the rental unit.

I am not satisfied that the landlord has demonstrated to the extent required that he properly served the tenant the application for dispute resolution in accordance with section 89(1) of the Act. For this reason, I dismiss the landlord's application with leave to reapply.

### Conclusion

The landlord's application for an Order of Possession on the basis of the 10 Day Notice is withdrawn, as both parties agreed that this tenancy has ended.

I dismiss the landlord's application 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 28, 2016

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Residential Tenancy Branch