



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding KANG PROPERTY INC. DBA GARDEN APARTMENTS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR OPR

### Introduction

This hearing dealt with the landlord's application, originally made by Direct Request (an ex parte application) pursuant to the *Residential Tenancy Act* ("the Act") for an Order of Possession for Unpaid Rent pursuant to section 55 and a monetary order for unpaid rent pursuant to section 67. The landlord's application for Direct Request was adjourned to a participatory hearing to clarify details of his application.

The landlord attended this hearing. He testified that he served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") on March 6, 2017 by posting the notice on the tenant's door. I accept that the tenant was served with the 10 Day notice on March 9, 2017, 3 days after its posting.

The landlord also testified that his Application for Dispute Resolution ("ADR") hearing package with a Notice of hearing was served to the tenant by registered mail on March 25, 2017. The landlord provided a receipt for the registered mailing but the photocopy was illegible and he was unable to provide a Canada Post tracking number.

### Preliminary Issue

The landlord had difficulty describing the nature of the service of the ADR package to the tenant. The landlord was uncertain that the tenant received the ADR package. The landlord vacillated in his position as to whether the tenant was still residing in the rental unit and, ultimately, he stated that the tenant left in February or March and left a friend behind in the rental unit. He doesn't know how to evict this friend from the rental unit.

Residential Tenancy Policy Guideline No. 12 sets out the ways in which one party must serve hearing materials to another party. Policy Guideline No. 12 reinforces the special rules for service of certain documents, including but not limited to an application for dispute resolution. With respect to an application for dispute resolution requesting an order of possession, section 89 of the Act reads,

**89** (2) An application by a landlord under section 55 [*order of possession for the landlord*], ...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 [subservice]  
... **[emphasis added]**

The evidence regarding service of documents in this matter was unclear. During this hearing, the landlord provided candid testimony that he was uncertain as to whether the tenant continued to reside in the rental unit at all. He testified that a friend appears to continue to reside in the rental unit and he wants to require that person to leave. The landlord did not provide a copy of the ADR with notice of this hearing to the person that he believes continues to reside in the unit. The landlord sent a copy of the ADR package by registered mail addressed to the tenant at the rental unit address. However, as he is not able to confirm with certainty that the tenant resides in the rental unit, he cannot prove service sufficient to proceed with this application.

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 respondent (in this case the tenant) does not appear at a Dispute Resolution hearing, **the applicant (landlord) must be prepared to prove service under oath.**

There was insufficient evidence to show that the tenant continues to receive mail or reside in any manner at the rental unit. Therefore, there was insufficient evidence to prove that the tenant had received the landlord's ADR package. The landlord provided a photocopy of a registered mail receipt. Unfortunately, that receipt is illegible and the landlord was unable to indicate whether he can provide another copy of the receipt to allow the registered mailing to be verified.

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.

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. 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 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

The landlord's application is dismissed in its entirety 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: April 27, 2017

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Residential Tenancy Branch