



# 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 an application by the landlord pursuant to the *Residential Tenancy Act* for an order of possession and for a monetary order for unpaid rent and the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The landlord was assisted by an agent. The tenant was represented by an agent (KR) who stated that the tenant was in the hospital undergoing surgery at the time of the hearing.

### **Issues to be decided**

Did the landlord serve the tenant with a valid notice to end tenancy? Is the landlord entitled to an order of possession, unpaid rent and the filing fee?

### **Background and Evidence**

The tenancy started on August 01, 2017 on a month to month basis. The monthly rent is \$1,650.00 payable on the first of each month.

KR agreed that the tenant's rent cheque dated October 12, 2017 for the month of October bounced. The landlord testified that on November 05, 2017, he served the tenant with a ten day notice to end tenancy for unpaid rent, by posting it on the front door. KR testified that the tenant denied having received the notice. The landlord stated that he had proof of service of the notice by way of a video recording and a photograph, but failed to file it into evidence.

KR stated that on December 06, 2018, the tenant paid the landlord a total of three month's rent for the months of October, November and December 2017 and added that the tenant paid rent for February 2018 on February 02, 2018 in her presence. KR did not mention how, when or if rent for January 2018 was paid and did not file any proof of payment of rent.

## **Analysis**

Section 88 of the *Residential Tenancy Act* addresses:

### **How to give or serve documents generally**

**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.

In this case, the landlord testified that he served the notice to end tenancy by posting it on the front door. The tenant denied having received the notice to end tenancy.

Based on s.88, I find that the landlord served the notice by posting the notice on the front door but failed to provide any proof of service. The tenant denied having received the notice and in the absence of proof of service on the notice, I am unable to consider the tenant served with the notice to end tenancy.

Based on the sworn testimony of the both parties, I find that the landlord has not proven that he served the tenant with a ten day notice to end tenancy and therefore I find that the tenant was not given the opportunity to dispute the notice. Accordingly, the landlord's application is dismissed. Since the landlord has not proven his case, he must bear the cost of filing this application.

### **Conclusion**

The landlord's application is dismissed.

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: February 07, 2018

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Residential Tenancy Branch