



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPC, FFL

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “application”) filed by the Landlord under the *Residential Tenancy Act* (the “Act”), seeking an Order of Possession and recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Landlords, who are owners of the property, J.J. and S.K., as well as their legal counsel. The Tenants did not attend. Although legal counsel for the Landlords’ provided only submissions and arguments for my consideration, the Landlord’s both provided affirmed testimony.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondents must be served with a copy of the Application and Notice of Hearing. As the Tenants did not attend the hearing, I inquired with the Landlords regarding the service of these documents as explained below.

In the hearing the Landlords testified that one package was sent to the rental address by courier on May 16, 2018, which included the Application, the Notice of Hearing, and the evidence before me from the Landlords. When asked the Landlords and their legal counsel confirmed that no signature was required for the package as the Tenants apparently have a contract with the particular courier used whereby no signature is required. The Landlords also confirmed that only one package was sent naming all three of the Respondents as they all reside in the same rental unit.

Section 89 of the *Act* states that an Application, when required to be given to a tenant, must be given by leaving a copy with the tenant; by sending a copy by registered mail to the address at which the tenant resides or to the forwarding address provided by the tenant; or as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

As there is no evidence before me that the Landlords have an order allowing them to serve the Tenants in a manner other than those required by the *Act*, I find that the Landlords were therefore required to serve the Tenants with the Application either in person or by registered mail.

Residential Tenancy Branch Policy Guideline (the "Policy Guideline") #12 states that registered mail includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available. As the Landlords and their legal counsel stated that the Application was sent by courier, not Canada Post, I find that it was not sent in compliance with section 89 of the *Act*.

Policy Guideline #12 also states that where more than one party is named on an Application, each party must be served separately and that failure to do so may result in the application being adjourned, dismissed with leave to reapply, or dismissed without leave to reapply.

Further to this, sections 3.1 and 3.5 of the Rules of Procedure state that the Applicant must serve each respondent with copies of the Application, the Notice of Hearing, and all evidence to be relied on by the applicant in the hearing and be prepared to satisfy the arbitrator of this service in the hearing.

Based on the testimony of the Landlords and their legal counsel in the hearing, I therefore find that the Tenants have not been served with the Application, the Notice of Hearing, or the evidence before me in accordance with the above noted sections of the *Act* and the Rules of Procedure.

Further to this, I find that the opportunity to know the case against you and to provide evidence and testimony in your defense are fundamental to the dispute resolution process. As the Tenants were not properly served with the Application, the Notice of Hearing, or the evidence before me, I find that they did not have a fair opportunity to know the case against them or to appear at the hearing in their defense. As a result, the Application is therefore dismissed with leave to reapply.

As the Landlords were not successful in their Application, I decline to grant them recovery of the \$100.00 filing fee.

Conclusion

The Landlords' Application is dismissed with leave to re-apply. This is not an extension of any statutory deadline.

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: June 21, 2018

---

Residential Tenancy Branch