



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

OPR MNRL FFL

### Introduction

This hearing dealt with an application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55 of the *Act*;
- a Monetary Order for unpaid rent pursuant to section 67 of the *Act*; and
- recovery of the filing fee for this application from the tenant pursuant to section 72 of the *Act*.

The tenant, who was the respondent in this matter, did not attend this hearing, although I left the teleconference hearing connection open until 10:06 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The applicant, who claimed to be the landlord in this matter, attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes were provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

### Preliminary Issue – Service of Documents

As only the landlord attended the hearing, I asked the landlord to confirm that he had served the tenant with the Dispute Resolution Proceeding (Dispute) package for this hearing. The landlord could not recall the date of service, but estimated that it was around September 7, 2018. The landlord testified that he attended in person at the dispute address to serve the tenant with the Dispute package. The landlord testified that the tenant came to the door, but remained behind the screen door, refused to accept the package and told the landlord to throw it on the ground. The landlord testified that he stuck the Dispute package in the crack of the door. Witness M.K. was called upon to provide testimony to the service of the Dispute package as she drove to the dispute address with the landlord. The witness testified that the tenant was not there, and that she saw the landlord post the Dispute package on the tenant's rental unit door. She was also unable to recall the date that this occurred.

The landlord stated that the witness was unable to see from the car that the tenant had answered the door.

Where a respondent is not at the hearing, the applicant bears the burden to prove the respondent was served with notification of the hearing and the claims against them.

Since this application pertains to an order of possession and a monetary claim by a landlord against a tenant, the only methods of service that are permissible, as outlined in section 89(1) of the Act, are as follows:

- personal service;
- registered mail; or
- as ordered by the director (or director's representative) for the Residential Tenancy Branch.

Further particulars on to how to carry out service are provided in Residential Tenancy Policy Guideline 12. Service Provisions, in Part 4:

***i. Personal service***

*o Where a landlord is personally serving a tenant, the landlord must leave a copy with the tenant, or by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant. The landlord must leave a copy for each cotenant.*

*This requires physically handing a copy of the document to the person being served. If the person declines to take the document, it may be left near the person so long as the person serving informs the person being served of the nature of the document being left near them.*

***ii. Registered Mail***

*o Where a landlord is serving a tenant by Registered Mail, the address for service must be where the tenant resides at the time of mailing.*

The landlord has the burden of proving service by one of these methods, as explained in Part 15 of Policy Guideline 12, as follows:

*Where the respondent does not appear at a dispute resolution hearing, the applicant must be prepared to prove service of the notice of hearing package.*

*...*

*Where proof of service is required, the person who actually served the documents must either:*

- *be available as a witness in the hearing to prove service, or*
- *provide a signed statement with the details of how the documents were served.*

*Proof of service **personally** should include the date and time of service, the location where service occurred, description of what was served, the name of the person who was served, and the name of the person who served the documents.*

*Proof of service by **Registered Mail** should include the original Canada Post Registered Mail receipt containing the date of service, the address of service, and that the address of service was the person's residence at the time of service, or the landlord's place of conducting business as a landlord at the time of service as well as a copy of the printed tracking report.*

*Failure to prove service may result in the matter being dismissed, with or without leave to reapply. Adjournments to prove service are given only in unusual circumstances.*

In this case, there is a discrepancy between the testimony provided by the landlord and the testimony of the witness regarding the service of the notice of this hearing. Further to this, neither the landlord nor the witness could recall the date or time of service. As such, I find that the landlord failed to establish that the tenant was served with notification of this proceeding in a manner that complies with section 89(1) of the *Act*. Therefore, I order this application dismissed, and grant the landlord liberty to reapply. I make no findings on the merits of the matter. The issuance of this decision with leave to reapply does not extend any applicable time limits under the *Act*.

#### Conclusion

As the notice of this hearing was not served on the tenant in accordance with section 89(1) of the *Act*, I dismiss this application, but grant the landlord liberty 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: October 17, 2018

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Residential Tenancy Branch