



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      OPRM-DR FFL

### **Introduction**

The matter originally proceeded by way of an *ex parte* Direct Request Proceeding on September 27, 2018, pursuant to section 55(4) of the *Residential Tenancy Act* (the “Act”), and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on unpaid rent and a Monetary Order.

On October 7, 2018, the tenant was granted their application for review consideration, and the Decision and Order dated September 27, 2018 were suspended until the Review Hearing was held. The tenant filed the application for review consideration on the grounds of having new and relevant evidence, and that the decision and order were obtained by fraud.

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

The application for review consideration decision dated October 7, 2018 noted the requirements for service of documents for this hearing. The landlord acknowledged receipt of all hearing documents, and was ready to proceed with this matter. The tenant also acknowledged receipt of the landlord’s documentary materials for this hearing, and was ready to proceed.

### **Preliminary Issue: Landlord’s Request to Dismiss this Review Hearing**

At the outset, the landlord made an application requesting the dismissal of this Review Hearing as the original application for review consideration was not filed on time by the tenant. The tenant’s counsel acknowledged in the hearing that on the application for

review consideration, she had incorrectly noted October 1, 2018 as the date the tenant received the decision, but that at the time of the application she was unaware that the tenant's girlfriend had received the decision on September 28, 2018.

The Arbitrator allowed the application for the review consideration taking in consideration that the information provided was truthful and accurate. The Arbitrator then made a finding that the tenant has provided sufficient evidence to satisfy the Arbitrator that a new hearing should be held on the grounds of new and relevant evidence.

I have considered the landlord's application, and although it was undisputed that the date provided for the receipt of the decision was incorrectly noted, I find that the application has already been made and decided by the Arbitrator on October 7, 2018. I find that the landlord did not file any applications for a review consideration of that decision made on October 7, 2018. Accordingly, in the absence of any applications made by the landlord for a review consideration of the October 7, 2018 decision, I find that I do not have the jurisdiction to reconsider the original review consideration dated October 7, 2018. I have considered the evidence and testimony submitted for the review hearing held on November 22, 2018, and my findings are below.

### **Issue(s) to be Decided**

Should the Decision and Order dated September 27, 2018 be confirmed?

### **Background and Evidence**

This fixed-term tenancy began on March 1, 2018, with monthly rent currently set at \$4,100.00. The landlord collected a security deposit in the amounts of \$2,050.00, and continues to hold that deposit.

The landlord issued a 10 Day Notice to End Tenancy on September 6, 2018. The tenant is disputing the service of the 10 Day Notice, stating that he only became aware of the 10 Day Notice after receiving the September 28, 2018 decision and order.

The landlord testified that on September 6, 2018, the 10 Day Notice was served though the tenant's mail slot. The landlord provided a Proof of Service in his evidentiary package with a signed statement from GC, who attended with him on September 6, 2018 to serve the 10 Day Notice. The Proof of Service states that the 10 Day Notice was served on September 6, 2018 at 6pm by placing the 10 Day Notice in the mailbox or mail slot at the tenant's residence.

GC attended the review hearing as the landlord's witness to testify to the service of the 10 Day Notice. GC testified that both the landlord and herself attended the tenant's residence on September 6, 2018, and that around 11:00 a.m. or around 4.p.m. the tenant was served by way of posting the notice on the door. When the tenant's counsel cross-examined GC in the hearing, GC could not recall whether the notice was served by way of posting it on the door, or by placing the notice in the tenant's mail slot.

### **Analysis**

I have considered the undisputed testimony of the landlord in today's review hearing, as well as the evidence that was submitted by the landlord.

Section 88 of the *Act* establishes the requirements for service of documents.

### ***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 mailbox 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.*

The tenant disputed that he was ever served with the 10 Day Notice, stating that he only became aware of the notice when he received the decision and order dated September 28, 2018, after an ex-parte Direct Request Proceeding was held on September 28, 2018.

I find that the landlord's witness, GC, did not have a specific recollection of how and when the 10 Day Notice was served. I find that GC's testimony changed several times in the hearing, and therefore I am unable to rely on her testimony to determine how and when the tenant was served with the 10 Day Notice. Furthermore GC provided a different timeline for when the notice was served than what was stated in the proof of service document provided by the landlord.

In light of the inconsistent testimony and evidence submitted by the landlord, I find that the landlord did not provide sufficient evidence to support that the tenant was served with the 10 Day Notice in accordance by section 88 (g) of the Act. On this basis, I am

cancelling the 10 Day Notice dated September 6, 2018 as I am not satisfied that the tenant was served in accordance with section 88 the *Act*.

The Order of Possession dated September 28, 2018 is cancelled, and the tenancy will continue until ended in accordance with the *Act* and tenancy agreement.

**Conclusion**

The 10 Day Notice dated September 6, 2018 is cancelled, and is of no force or effect.

The Order of Possession dated September 28, 2018 is cancelled, and the tenancy will continue until ended in accordance with the *Act* and tenancy agreement.

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 3, 2018

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Residential Tenancy Branch