



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes OPRM-DR, FFL

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* ("Act"), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 23 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The hearing began at 9:30 a.m. The landlord claimed that he was calling from his van in the parking lot of his doctor's office, waiting for his doctor's appointment at 9:40 a.m. When I informed the landlord that this hearing could take longer than 9:40 a.m., he stated that he could go late to his doctor's appointment. The landlord claimed that he had two piles of evidence in front of him during the hearing but seemed confused between this file and another file with another tenant that had a similar file number.

### Preliminary Issue – Direct Request Proceeding and Service

This hearing was originally scheduled as a direct request proceeding, which is a non-participatory hearing. An "interim decision," dated December 17, 2018, was issued by an Adjudicator for the direct request proceeding. The interim decision adjourned the direct request proceeding to this participatory hearing.

The landlord was required to serve the tenant with a copy of the interim decision, the notice of reconvened hearing and all other required documents, within three days of receiving it, as outlined in the interim decision itself. The landlord stated that his daughter served the tenant in person with the above required documents. He initially claimed he was not sure of the date. Then he stated it was December 18 or 19, 2018. He then clarified that it was December 19, 2018.

When I asked the landlord how his original direct request proceeding documents were served to the tenant, he said that it was done in person on December 27, 2018. When I asked how it was done over a month after his direct request was filed on November 21, 2018, and after the interim decision of December 17, 2018, he said that the Residential Tenancy Branch ("RTB") mixed up his documents with

another file so he was unable to serve the documents on time. When I questioned his proof of service document with this file number and this tenant's name, indicating that the original direct request documents were served to another individual in person on November 22, 2018, the landlord claimed that this was a different tenant in a different unit.

I find that the tenant was not served with the interim decision, notice of reconvened hearing and original direct request application documents, as per section 89 of the *Act*. The landlord provided different service dates and the dates given were not within the 3 days allowed for service. I notified the landlord that his application was dismissed with leave to reapply, except for the filing fee. I informed him that he would be required to file a new application, pay another filing fee and provide proof of service at the next hearing, if he chooses to pursue this matter further.

The landlord became upset by my decision and began arguing about it, asking me to look up the other file number to confirm the mix up of documents by the RTB. I notified him that it was not appropriate for me to be looking up other file numbers on the RTB online system. I informed him that I had to dismiss his application as I could not confirm service of the above required documents to the tenant.

#### Conclusion

The landlord's application to recover the \$100.00 filing fee is dismissed without leave to reapply.

The remainder of the landlord's application is dismissed 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: February 04, 2019

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Residential Tenancy Branch