



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **FFL MNRL OPR**

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- An Order of Possession for unpaid rent pursuant to sections 46 and 55;
- A monetary order for rent pursuant to section 67; and
- Authorization to recover the filing fee pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:40 a.m. to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m.

The landlord and his agent, JM ("landlord") attended the hearing. The landlord 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 had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified that the tenant was served the Notice of Hearing package via Canada Post registered mail on January 11, 2019. The landlord provided a tracking number, noted on the front of this decision. I find that the tenant is deemed served with the Notice of Hearing package five days later, on January 16, 2019 in accordance with sections 89 and 90 of the *Act*.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a Monetary Award?

Can the landlord recover the filing fee?

### **Preliminary Issue – Service of 10 Day Notice**

Residential Tenancy Policy Guideline PG-12 [Service Provisions] provides guidance respecting service of documents. Part 15 of PG-12 speaks to proof of service by registered mail, reproduced below:

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.

The landlord testified that he did not know which registered mail tracking receipt was associated to this tenant's Notice. The landlord could not verify the specific address the Notice was sent to since both the packages mailed out on December 12, 2018 went to the same community. The receipts from Canada Post were both blank, leading to further confusion on the part of the landlord as to what package was sent where. Lastly, the unrelated confirmation of delivery for the unrelated matter that was signed for the same day the landlord testified the tenant's Notice was delivered presents a further complication for determining service.

The evidence of the landlord and tenant exchanging emails two days prior to this hearing without mentioning the Notice, together with the evidence of the tenant paying rent for the month of January after receiving Notice in December gives further doubt regarding the tenant's awareness of the Notice.

I find that the landlord was unable to demonstrate that he served the tenant with the 10 Day Notice to End Tenancy. I am not satisfied the tenant has been put on sufficient notice of the claim against him and that he has had adequate time and opportunity to respond to the application. Given this finding, I dismiss the landlord's application with leave to reapply.

As the landlord was not successful, he is not entitled to recovery of the filing fee for the cost of this application.

### **Conclusion**

The landlord's application is dismissed with leave to reapply. This tenancy shall continue until it is ended in accordance with the *Act*.

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 14, 2019

---

Residential Tenancy Branch