



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFL, OPRM-DR (Landlord)  
                              CNR, OLC (Tenant)

### Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Landlord filed the application March 08, 2019 (the “Landlord’s Application”). The Landlord applied for an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 06, 2019 (the “February Notice”). The Landlord also sought to recover unpaid rent and reimbursement for the filing fee.

The Tenant filed the application March 14, 2019 (the “Tenant’s Application”). The Tenant applied to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 09<sup>th</sup> (the “March Notice”). The Tenant also sought an order that the Landlord comply with the Act, regulation and/or the tenancy agreement.

The Landlord and Property Manager appeared at the hearing. Nobody appeared at the hearing for the Tenant.

I note that the Property Manager is named as the landlord on the Tenant’s Application and therefore I have named the Property Manager in the style of cause. I find it acceptable that the Property Manager was named as she is a “landlord” as that term is defined in section 1 of the *Residential Tenancy Act* (the “Act”).

The Landlord confirmed at the outset that she had been issued an Order of Possession for the rental unit on File Number 1 as noted on the front page of this decision. She confirmed the Tenant vacated the rental unit April 01, 2019. The Landlord confirmed she no longer requires an Order of Possession but is still seeking unpaid rent.

I explained the hearing process to the Landlord who did not have questions when asked. The Landlord provided affirmed testimony. The Property Manager called into the hearing late and was not affirmed.

The Landlord had submitted evidence prior to the hearing. The Tenant had submitted a copy of the March Notice on his application. The Tenant had not submitted evidence on the Landlord's Application. I addressed service of the hearing package and Landlord's evidence.

The Landlord testified that the hearing package and evidence were attached to the door of the rental unit March 12, 2019. I asked the Landlord if she had any evidence that the Tenant in fact received the package. The Landlord testified that the Tenant sent messages saying she could leave the package on the door. She said other tenants saw the Tenant take the package from the door. The Landlord testified that there was nothing from the Tenant acknowledging receipt of the package. The Landlord testified that she had a Proof of Service; however, acknowledged that this only showed the package was left on the door of the rental unit. Further, this was not submitted to me. The Landlord confirmed no evidence of service of the hearing package and evidence was submitted to me.

The Property Manager testified that she knew the Tenant received the hearing package and evidence because she found these documents in the rental unit after the Tenant had vacated.

Section 89(1) of the *Act* outlines the permissible forms of service for an application for dispute resolution where a landlord is seeking a monetary order rather than just an order of possession. Section 89(1) of the *Act* states:

89 (1) An application for dispute resolution...when required to be given to one party by another, must be given 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 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 registered mail to a forwarding address provided by the tenant;

(e) as ordered by the director under section 71 (1)...

The hearing package was posted on the door of the rental unit which is not a form of service permitted under section 89(1) of the *Act*. Therefore, I cannot deem the hearing package received pursuant to section 90 of the *Act*.

The Tenant did not appear at the hearing to confirm he received the hearing package and evidence or that he was otherwise aware of the Landlord's Application.

Pursuant to section 71(2) of the *Act*, it is open to me to determine that the Tenant was sufficiently served for the purposes of the *Act* despite not being served in accordance with section 89(1) of the *Act*. In my view, this is only appropriate when there is sufficient evidence before me that the Tenant in fact received the hearing package.

The Landlord submitted no documentary evidence in support of her testimony about service. There is no documentary evidence before me showing the Tenant received the hearing package or evidence. The Tenant did not appear at the hearing. The Tenant did not submit evidence on the Landlord's Application.

The Landlord testified that the Tenant said she could leave the package on the door. No documentary evidence of this was submitted. This is not evidence that the Tenant received the package. In my view, the Landlord was still required to comply with section 89(1) of the *Act* despite the Tenant stating otherwise.

The Landlord testified that other tenants saw the Tenant take the package off the door. No evidence in support of this was submitted. I do not find the Landlord's verbal testimony on this to be sufficient to satisfy me that the Tenant should be deemed served pursuant to section 71(2) of the *Act*.

The Property Manager testified that she found the hearing package and evidence in the rental unit when cleaning it upon the Tenant vacating. No documentary evidence in support of this was submitted. I do not find the Property Manager's verbal testimony on this to be sufficient to satisfy me that the Tenant should be deemed served pursuant to section 71(2) of the *Act*.

In the circumstances, I am not satisfied that the Tenant was served in accordance with section 89(1) of the *Act* and am not satisfied the Tenant in fact received the hearing package such that I can deem him received pursuant to section 71 of the *Act*.

I note that this hearing involved cross Applications for Dispute Resolution and therefore the Tenant would have been aware of the hearing date and time. However, I cannot conclude that the Tenant would have been aware of the Landlord's Application.

Given I am not satisfied of service, the Landlord's Application is dismissed with leave to re-apply. This does not extend any time limits set out in the *Act*.

Rule 7.3 of the Rules of Procedure states that an arbitrator can dismiss an Application for Dispute Resolution without leave to re-apply if a party fails to attend the hearing.

Given the Tenant did not appear at the hearing, I have no evidence before me as to the basis for the Tenant's Application. In the absence of evidence from the Tenant, the Tenant's Application is dismissed without leave to re-apply.

### Conclusion

The Landlord's Application is dismissed **with** leave to re-apply. This does not extend any time limits set out in the *Act*.

The Tenant's Application is dismissed **without** leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: April 30, 2019

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Residential Tenancy Branch