



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding JMR RENTALS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FFL, OPRM-DR

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on March 01, 2019 (the "Application"). The Landlord sought an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"). The Landlord also sought to recover unpaid rent and reimbursement for the filing fee.

The Landlord appeared at the hearing. The Landlord provided the correct name of the company Landlord and this is reflected in the style of cause. Nobody attended the hearing for the Tenants. I explained the hearing process to the Landlord who did not have questions when asked. The Landlord provided affirmed testimony.

The Landlord advised at the outset that the Tenants had vacated the rental unit in March and therefore he no longer sought an Order of Possession.

The Landlord had submitted evidence prior to the hearing. The Tenants had not submitted evidence. I addressed service of the hearing package and Landlord's evidence.

This matter started as a direct request proceeding. The matter was adjourned to a participatory hearing and the Interim Decision stating this was issued March 12, 2019. At page three of this decision, it states:

**Notices of Reconvened Hearing are enclosed with this interim decision. The applicant must serve the Notice of Reconvened Hearing, the interim decision, and all other required documents, upon each of the tenants within three (3) days of receiving this decision in accordance with section 89 of the Act.**

The Landlord testified that the hearing package for this hearing was posted on the door of the rental unit March 13, 2019. He said the Tenants had vacated around this time. He testified that he last saw the Tenants March 12<sup>th</sup>. He said he never saw the Tenants again after posting the hearing package on the door of the rental unit. He testified that he never received a forwarding address from the Tenants.

Rule 3.5 of the Rules of Procedure states:

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

The *Residential Tenancy Act* (the “Act”) sets out service requirements in sections 88 and 89. Section 88 relates to service of documents other than those referred to in section 89 of the Act. Section 89 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)...

(2) An application by a landlord under section 55 [order of possession for the landlord], 56 [application for order ending tenancy early] or 56.1 [order of possession: tenancy frustrated] must be given to the tenant in one of the following ways:

- (a) by leaving a copy with the tenant;

(b) by sending a copy by registered mail to the address at which the tenant resides;

(c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;

(d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;

(e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].

Section 89(2) of the *Act* relates to applications for dispute resolution where the landlord is seeking an Order of Possession for the rental unit. Where a landlord is seeking a Monetary Order for unpaid rent, or other monies owing, section 89(1) of the *Act* applies and the tenants must be served in one of the ways permitted under this section.

Here, the hearing package was served on the Tenants by posting it on the door of the rental unit. Two issues arise on the evidence presented. First, I am not satisfied the Tenants continued to reside at the rental unit on March 13<sup>th</sup> when the hearing package was posted to the door of the rental unit given the Landlord's testimony that the Tenants vacated around this date, that he last saw them March 12<sup>th</sup> and never saw them after posting the hearing package on the door of the rental unit. Second, posting the hearing package on the door of the rental unit is not a form of service permitted under section 89(1) of the *Act* which applies to the Application as the Landlord is seeking a Monetary Order for unpaid rent. I note that the Landlord is no longer seeking an Order of Possession and therefore section 89(2) of the *Act* does not apply and is not relevant.

Given the hearing package was not served in accordance with section 89(1) of the *Act*, it cannot be deemed received by the Tenants under section 90 of the *Act*.

It is open to an arbitrator to determine that documents not served in accordance with section 89(1) of the *Act* were sufficiently served for the purposes of the *Act* under section 71(2) of the *Act*. This may be appropriate where there is evidence before the arbitrator that the party being served in fact received the documents despite them not being served in accordance with section 89(1) of the *Act*.

I have reviewed the Interim Decision and note that it required the Landlord to serve the Tenants with the hearing package in accordance with section 89 of the *Act*.

The Tenants did not appear at the hearing to confirm receipt of the hearing package. The Tenants did not submit evidence for the hearing which may have satisfied me that they received the hearing package. I have reviewed the evidence submitted by the Landlord. There is no evidence submitted showing the Tenants in fact received the hearing package, such as correspondence from the Tenants acknowledging receipt.

Having reviewed the evidence, I am not satisfied the Tenants were served with the hearing package in accordance with section 89(1) of the *Act* as required for a monetary claim and am not satisfied the Tenants in fact received the hearing package such that I would deem the service method sufficient under section 71(2) of the *Act*. Given this, I dismiss the Application with leave to re-apply. This does not extend any time limits set out in the *Act*.

### Conclusion

I am not satisfied the Tenants were served with the hearing package in accordance with the *Act* and am not satisfied the Tenants in fact received the hearing package. Given this, I dismiss the Application with leave to re-apply. This does not extend any time limits set out in 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 *Act*.

Dated: May 02, 2019

---

Residential Tenancy Branch