



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PALMAR PROPERTIES INC. and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPL-4M

### Introduction

This is an Application for Dispute Resolution brought forward by the landlord pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for Landlord's Use of Property pursuant to sections 49 and 55 of the *Act*.

The landlord's agent attended on behalf of the landlord at the date and time set for the hearing of this matter. The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:54 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution. I also confirmed from the teleconference system that the landlord's agent and I were the only ones who had called into this teleconference.

As only the landlord's agent attended the hearing, I asked the landlord's agent to confirm that the tenant had been served with the Notice of Dispute Resolution Proceeding for this hearing. The landlord's agent testified that the tenant was sent the landlord's notice of this hearing by Canada Post registered mail, however he was unable to locate the Canada Post registered mail receipt in order to confirm the date of service and to provide the registered mail tracking number. The landlord's agent testified that he believed he had left his proof of service documents with Residential Tenancy Branch staff when he had submitted his Application to amend his original Application for Dispute Resolution. I reviewed the evidence uploaded to the Dispute Resolution website but could not locate any proof of service evidence pertaining to the

Notice of Dispute Resolution proceeding, only that pertaining to service of the notice to end tenancy.

Rule 3.5 of the Residential Tenancy Branch Rules of Procedure requires:

*3.5 Proof of service required at the dispute resolution hearing*

*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.*

Residential Tenancy Branch Policy Guideline #12. Service Provisions provides a further explanation regarding proof of service, in part, as follows:

**15. PROOF OF SERVICE**

*Where the respondent does not appear at a dispute resolution hearing, the applicant must be prepared to prove service of the notice of hearing package. Proof of service of other documents may be submitted in support of claims for dispute resolution in accordance with the Rules of Procedure.*

*Where proof of service is required, the person who actually served the documents must either:*

- be available as a witness in the hearing to prove service, or*
- provide a signed statement with the details of how the documents were served.*

*Proof of service personally should include the date and time of service, the location where service occurred, description of what was served, the name of the person who was served, and the name of the person who served the documents.*

***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.***

**[My emphasis added]**

In this matter, the respondent did not attend the hearing to confirm receipt of the notice of this hearing, and the applicant, who was the landlord in this matter, was unable to provide proof of service of the Notice of Dispute Resolution Proceeding package.

For these reasons, I am not satisfied that the tenant has been sufficiently served with the Notice of Dispute Resolution Proceeding as required by the *Act*.

Therefore, I dismiss the landlord's application with leave to reapply. I note this decision does not extend any applicable time limits under the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession on the basis of the notice to end tenancy issued for landlord's use of property?

Conclusion

The landlord's application is dismissed with leave to reapply due to a service issue. This decision does not extend any applicable time limits under 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: May 21, 2019

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Residential Tenancy Branch