



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes: OPR & FFL

### Introduction

The Application for Dispute Resolution filed by the landlord seeks the following:

- a. An Order for Possession for non payment of rent.
- b. An Order to recover the cost of the filing fee.

The tenant(s) failed to appear at the scheduled start of the hearing which was 11:00 a.m. on July 19, 2019. A representative of the landlord was present and ready to proceed. I left the teleconference hearing connection open and did not start the hearing until 10 minutes after the schedule start time in order to enable the tenant to call in. The tenant(s) failed to appear. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I then proceeded with the hearing. The representative of the landlord was given a full opportunity to present affirmed testimony, to make submissions and to call witnesses.

I find that the Notice to End Tenancy was served on the Tenant by posting to the door of the rental unit on May 23, 2019. The representative of the landlord testified they attempted to serve the tenant by mailing, by registered mail to where the Tenant resides. However, the documents were returned by Canada Post with the notation "no such address." She testified she contacted Canada Post and the Municipality and was advised that mail in that area is not delivered to the residence and that the resident would have to set up a Post Office Box.

### Analysis:

I determined the landlord has failed to prove that he has sufficiently served the tenant in accordance with the Residential Tenancy Act. The landlord failed to prove that Notification cards were left at the residence or that the respondent was given a copy of the Application for Dispute Resolution/Notice of Hearing. .

Accordingly, **I order the application dismissed with liberty to reapply.** I make no finding on the merits of the matter. Liberty to reapply is not an extension of any applicable

limitation period. The landlord is at liberty to rely on the Notice to End Tenancy for non payment of rent that was served in May 2019.

The landlord testified the tenant has failed to pay the rent for several months and there are concerns that he is failing to properly dispose of his garbage and there are bears in the area as a result. As a courtesy to the parties I have attached section 89(2) of the Residential Tenancy Act. Where a landlord is seeking a monetary order along with an Order of Possession the Application for Dispute Resolution must be served in accordance with section 89(1) either by leaving a copy with that person or by sending it by registered mail to where the tenant resides or to the forwarding address provided by the Tenant. However, where a landlord is seeking an Order of Possession (under section 55 of the Act), the landlord can serve as provided in section 89(2) and this includes service by attaching a copy to a door or other conspicuous place at the address at which the tenant resides (section 89(2)(d)).

“Special rules for certain documents

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, 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) [director's orders: delivery and service of documents].

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

(3) A notice under section 87.5 [notice of administrative penalty] must be given in a manner referred to in subsection (1).

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: July 19, 2019

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Residential Tenancy Branch