



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes

FFL OPRM-DR

### Introduction

This hearing, redirected from a Direct Request Proceeding, dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 10 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlord was attended and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that they served the tenant with the notice of Hearing in person to the tenant. The landlord did not state what date they served the tenant and did not provide a Proof of Service form or any documentary evidence in support of their submission that the tenant was served.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to recover the filing fee from the tenant?

### Background and Evidence

The landlord testified that this tenancy began in February, 2019 and that the monthly rent is \$850.00. When directly questioned about what date the rent is due, the landlord did not respond. The landlord eventually claimed that the rent is payable by the 1<sup>st</sup> of each month.

The landlord testified that the tenant did not pay the full amount of rent on May 1<sup>st</sup>, 2019 and that there was an arrear of \$750.00 as at May 25, 2019 the date of the 10 Day Notice. The landlord claimed that there was additional arrears as the tenant did not pay the rent during subsequent months but did not clearly state what the total arrear is as of the date of the hearing nor did they provide documentary evidence showing the arrear.

### Analysis

The onus is on the party bringing the claim to establish it on a balance of probabilities. In the present case I find the landlord to be a wholly unreliable witness. They constantly interrupted, did not respond to direct questions, provided testimony on matters irrelevant to the questions posed and had little documentary evidence in support of their submissions. They were unable to provide a simple response to the basic question of what date the rent was due and owing according to their own tenancy agreement. They ultimately claimed that rent was payable on the 1<sup>st</sup> but I find I have little confidence that the answer provided is true when it is not provided independently but only when reminded that the 10 Day Notice claimed that the rent was payable on the 1<sup>st</sup>.

Section 89(1) of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution for a monetary award:

*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) [director's orders: delivery and service of document]...*

While leaving a copy with a person is an acceptable manner of service I find that there is insufficient evidence in support of the landlord's submission that the tenant was personally served.

While the landlord submits that they served the tenant with the Notice of Hearing, they were unable to provide that date that it was served. While they claimed the Notice was served in the presence of witnesses they did not provide a Proof of Service in support of service. I am unconvinced that the Notice of Hearing was served on the tenant in accordance with the *Act*, or at all.

For the above reasons I dismiss the landlord's application in its entirety without leave to reapply.

### Conclusion

The landlord's application is dismissed in its entirety without leave to reapply.

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 16, 2019

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Residential Tenancy Branch