



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

The landlord applies for an order of possession pursuant to a ten day Notice to End Tenancy for unpaid rent and for a monetary award for unpaid rent.

The respondent tenant did not attend the hearing within twenty minutes after its scheduled start time at 11:00 a.m. on October 29, 2019. The teleconference hearing connection remained open during that time in order to enable the parties to call into the teleconference hearing. The call-in numbers and participant codes provided in the Notice of Hearing were confirmed as correct. The teleconference system audio console confirmed that the landlord and this arbitrator were the only ones who had called into this teleconference during that period.

The landlord's son Mr. R. C-N. testified that he personally served the tenant with the ten day Notice to End Tenancy on August 15, 2019. He testifies that he attempted to personally serve the tenant with the hearing package: the application and notice of hearing, by attending at the property three days without the tenant being home and that he finally left the hearing package at the door on September 7, 2019.

The landlord confirms that the tenant has paid no money since the ten day Notice was served.

As explained at hearing, an application can proceed in the absence of a respondent, the tenant in this case, if it is shown that the respondent has been duly served with the application and notice of hearing.

Sections 89 of the *Residential Tenancy Act* (the “Act”) sets out the law regarding service of applications. It provides:

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

As may be seen, only an application under s. 55 for an order of possession may be served on a tenant by attaching a copy to a door at the rental unit where, as here, the tenant continues to reside.

Though it may seem odd, the result is that the landlord's application for an order of possession has, I find, been duly served on the tenant in accordance with s. 89(2), but the landlord's application for a monetary award against the tenant has not been served in accordance with s. 89(1).

I find that this tenancy ended on August 21, 2019 as a result of the ten day Notice and by operation of s. 46 of the *Act*. The landlord will have an order of possession.

I dismiss the landlord's monetary claim as not having been served in accordance with s. 89(1), above. I grant the landlord leave to re-apply.

I award the landlord recovery of the \$100.00 filing fee for this application. He is not holding any deposit money from which to recover the filing fee and so he will have a monetary order against the tenant in the amount of \$100.00.

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: October 29, 2019

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Residential Tenancy Branch