



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

OPR, FFL

### Introduction

On November 25, 2019, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") for an order of possession of the rental unit; and to recover the cost of the filing fee. The matter was set for a conference call hearing.

The Landlord attended the teleconference hearing; however, the Tenant did not. The Landlord was assisted by a person from victim services. The Landlord provided affirmed testimony that she did not serve the Tenant with the Notice of Dispute Resolution Proceeding documents.

The Landlord was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions at the hearing.

The Landlord testified that the tenancy began on October 15, 2019, as a five-month fixed term tenancy. Rent in the amount of \$700.00 is to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$350.00. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that the Tenant did not pay the rent owing under the tenancy agreement for the month of November 2019.

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 2, 2019, ("the 10 Day Notice").

The Landlord testified that the Tenant was served with the Notice by posting the Notice on the Tenant's door on November 2, 2019.

The 10 Day Notice indicates that the Tenant has failed to pay rent in the amount of \$700.00 which was due on November 1, 2019. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

There is no evidence before me that the Tenant made an application to dispute the 10 Day Notice.

The Landlord testified that the Tenant did not pay the outstanding rent within five days of receiving the 10 Day Notice.

The Landlord testified that there was an incident on November 10, 2019 where the Tenant and Landlord were involved in a physical fight. The Landlord testified that police attended the property and removed the Tenant from the rental unit. The Landlord testified that the tenant keeps returning to rental unit and had to be removed from the property on November 27 or 28<sup>th</sup>.

Ms. K.M. testified that there is a no contact order in place that stipulates the Tenant cannot return to the rental unit. The Landlord did not provide a copy of a no contact order.

The Landlord testified that she did not attempt to serve the Tenant with the Notice of Dispute Resolution Proceeding documents because she does not know where locate the Tenant and the Tenant is not permitted to be at the rental property.

The Landlord seeks an order of possession for the rental unit.

### Analysis

Section 89 (2) of the Act provides that an application by a Landlord under section 55 [order of possession for the landlord], 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 59(3) of the Act provides that a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I find that the Landlord did not make any attempt to serve the Tenant with the Notice of Dispute Resolution Proceeding in accordance with section 89(2) of the Act.

A fundamental principle of natural justice and administrative fairness is that a person who is subject to a proceeding has the right to receive notice of the proceeding, and to attend or respond.

There was no evidence provided regarding the length of time the Tenant is not permitted on the rental property. Had the Landlord posted the Notice or sent the Notice by registered mail, the Tenant could have made arrangements to receive the Notice or pick up the mail. Since the Landlord made no attempt to serve the the Notice of Dispute Resolution Proceeding, I find that the Tenant was not sufficiently served, and the Landlord's application cannot proceed.

The Landlord's application for an order of possession based on an undisputed 10 Day Notice is dismissed with leave to reapply.

### Conclusion

The Landlord did not serve the the Notice of Dispute Resolution Proceeding to the Tenant as required by section 89(2) of the Act.

The Landlord's application for an order of possession based on an undisputed 10 Day Notice is dismissed with 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: December 30, 2019

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Residential Tenancy Branch