



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **OPU-PP, MNRL-S, FFL**

### **Introduction**

This hearing was set to deal with a landlord's application for an Order of Possession for unpaid rent and utilities; and, a Monetary Order for unpaid rent and utilities; and, authorization to retain the security deposit.

The landlord appeared for the hearing, but there was no appearance on part of the tenant. Where a respondent does not appear for a hearing, the applicant bears the burden to prove the respondent was served with notification of the proceeding and the remedies sought by the applicant in a manner that complies with section 89 of the Act.

Since the tenant did not appear for the hearing, I explored service of hearing documents upon the tenant with the landlord.

The landlord initially stated he served the tenant with the proceeding package "in person" on September 18, 2020 but, when I asked the landlord to expand upon that and describe the service, the landlord testified that he went to the rental unit on September 18, 2020 but the tenant was not home or did not answer the door so the landlord placed the proceeding package in the mailbox at the rental unit on September 18, 2020.

Section 89 provides for the ways an Application for Dispute Resolution and other required documents must be served upon the respondent. Below, I have reproduced section 89:

**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]*.

[reproduced as written with my emphasis underlined]

In order to proceed to consider the landlord's request for an Order of Possession I must be satisfied the tenant was served in accordance with section 89(2). The permissible methods of service would be: giving the documents to the tenant; giving the documents to an adult who resides with the tenant; posting the documents to the door of the rental unit; or sending the documents to the tenant via registered mail.

In order to proceed to consider the landlord's request for a Monetary Order, I must be satisfied the tenant was served in accordance with section 89(1). The permissible methods of service would be: giving the documents to the tenant or sending the documents to the tenant via registered mail.

Leaving the hearing package in the mailbox at the rental unit is not one of the permissible methods for serving an Application for Dispute Resolution under section

89(1) or (2). Nor, did the landlord have the Director's authorization to leave the documents in the mailbox under a Substituted Service Order. Therefore, I find the landlord did not duly serve the tenant with notification of this proceeding and I decline to further consider the landlord's Application for Dispute Resolution.

I dismiss the landlord's Application for Dispute Resolution 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: November 05, 2020

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Residential Tenancy Branch