



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **FFL, OPR**

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent, pursuant to sections 46 and 55; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:48 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The landlord testified that he was not recording this dispute resolution hearing.

The landlord testified that the tenant was served with this application for dispute resolution via registered mail on September 16, 2021 and that this package was returned to sender. The landlord entered into evidence a tracking printout of the above mailing which states that:

- on September 2021 a notice card was left indicating where and when to pick up the package
- on September 27, 2021 the item was redirected to the recipient's new address

- on September 27, 2021 the recipient was not located at address provided. Item being returned to sender

The landlord entered into evidence the returned package. A return to sender sticker indicating that the package was refused is located on top of one half of the name and address the package was sent to. The tenant's last name can be seen as well as three numbers before the town the package was mailed to. The numbers visible are not in the address of the subject rental property listed on this application for dispute resolution.

The landlord testified that the numbers correspond to the tenant's PO Box. The landlord did not provide any documentary evidence to prove what the tenant's PO Box is. The landlord testified that the return to sender sticker is blocking the rest of the address and that he wrote both the address of the subject rental property and the PO Box number. It is not clear where the package was sent, the physical address or the PO Box.

Section 89(1) of the *Act* states that 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*].

[Emphasis added]

Rule 3.5 of the Residential Tenancy Branch Rules of Procedure States:

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

As the address cannot be seen under the return to sender sticker, it is not clear where the package was sent. According to the landlord's testimony the dispute resolution package listed a PO Box number. A tenant cannot reside at a PO Box and the landlord has not provided proof that the tenant accepted service at a PO Box. I find that the landlord has not proved, on a balance of probabilities, that the landlord's application for dispute resolution was served on the tenant at the address at which the tenant resides as required in section 89(1)(c) of the *Act* because it is not clear if the package was refused from the PO Box or another address.

I dismiss the landlord's application for dispute resolution with leave to reapply for failure to prove service in accordance with section 89 of the *Act*.

I notified the landlord that if he wished to pursue this matter further, he would have to file a new application. I cautioned the landlord to be prepared to prove service at the next hearing, as per section 89 of the *Act*.

I find that since the landlord's application was dismissed, the landlord is not entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

### Conclusion

I dismiss the landlord's application to recover the \$100.00 filing fee without leave to reapply.

The landlord's application for an Order of Possession 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: January 13, 2022

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Residential Tenancy Branch