



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR-DR, MNR-DR, FFL

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an adjourned *ex parte* application regarding the above-noted tenancy. The landlord applied for:

- an order of possession under a 10-Day Notice to End Tenancy for Unpaid Rent. pursuant to sections 46 and 55;
- a monetary order for unpaid rent, pursuant to section 26; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 9:40 A.M. to enable the tenant to call into this teleconference hearing scheduled for 9:30 A.M. The tenant did not attend the hearing. The landlord, represented by agents JN (the landlord) and RR, 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.

At the outset of the hearing the attending party affirmed she understands the parties are not allowed to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

The Notice of Dispute Resolution Proceeding (the application) is dated January 25, 2022.

The landlord affirmed she was aware that the tenant was no longer occupying the rental unit when she served the application via registered mail. The landlord does not know the tenant's forwarding address.

Section 89 of the Act states:

(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];
- (f)by any other means of service provided for in the regulations.

(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];
- (f)by any other means of service provided for in the regulations.

Residential Tenancy Branch Policy Guideline 12 states:

The decision whether to make an order that a document has been sufficiently served in accordance with the Legislation or that a document not served in accordance with the Legislation is sufficiently given or served for the purposes of the Legislation is a decision for the arbitrator to make on the basis of all the evidence before them.

The application for an order of possession is moot since the tenancy has ended and the tenant left the rental unit.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the application for an order of possession.

I find the landlord did not serve the application in accordance with section 89 of the Act, as the landlord was aware that the tenant moved out when the landlord served the application.

I dismiss the landlord's application for a monetary order with leave to reapply.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee.

### Conclusion

The landlord's application for an order of possession is dismissed without leave to reapply.

The landlord's application for a monetary order is dismissed with leave to reapply. Leave to reapply is not an extension of any applicable timeline.

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: May 09, 2022

---

Residential Tenancy Branch