



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **OPR-DR, MNR-DR, FFL**

### Introduction

On February 3, 2019, an Adjudicator appointed pursuant to the *Residential Tenancy Act* (the *Act*) adjourned the landlord's application for dispute resolution to a participatory hearing. She did so on the basis of an *ex parte* hearing using the Residential Tenancy Branch's direct request process. The adjudicator adjourned the direct request for the following reasons:

*Sections 89(1) and 89(2) of the Act do not permit service of a Notice of Dispute Resolution Proceeding by leaving a copy with an adult who appears to reside with the tenant when seeking monetary relief such as unpaid rent. As a result, I find that the Landlords' request for a monetary order for unpaid rent cannot proceed.*

*Second, the tenancy agreement submitted into evidence does not specify the amount of rent due or the day of the month on which rent is due. Although the Landlords submitted a type-written cover letter and supporting documents in support of a rent increase effective January 1, 2022, I find that this does not provide sufficient clarity with respect to the understanding between the parties at the time the tenancy agreement was entered into.*

*I find that a participatory hearing is necessary to resolve the above issues.*

This reconvened hearing dealt with an application filed by the landlord pursuant the *Residential Tenancy Act* (the "*Act*") for:

- An order of possession for unpaid rent, by direct request, pursuant to sections 46 and 55;
- A monetary order for unpaid rent, by direct request, pursuant to sections 26 and 67; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:10 a.m. to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. 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.

Both landlords attended the hearing. The landlords testified that the tenant vacated the rental property on or about February 16, 2022. As such, the landlords no longer require an Order of Possession. I dismissed the landlord's application seeking an order of possession for unpaid rent at the commencement of the hearing pursuant to section 62(4) of the Act.

As the tenant was not present at this hearing, I asked the landlords whether they complied with the adjudicator's interim decision to serve the tenant with the Notice of Dispute Resolution Hearing, the interim decision, and all other required documents upon the Tenant within three (3) days of receiving the interim decision. The landlords testified they sent those documents to the tenant via registered mail however they were unable to provide me with the exact date of mailing or a tracking number to verify it was sent.

### Analysis

An application for dispute resolution is a document that is governed by section 89 of the Act. (reproduced below).

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*].

Rule 3.5 of the Residential Tenancy Branch Rules of Procedure say the applicant must be prepared to the satisfaction of the arbitrator that the respondent was served with the Notice of Dispute Resolution Proceedings Package and all evidence as required by the Act. In this case, the landlords have not provided sufficient evidence to satisfy me the

tenant was served with the Notice of Dispute Resolution Proceedings in accordance with section 89 of the Act.

Conclusion

The landlords were unable to provide sufficient evidence to satisfy me they served the tenant with the documents as ordered by the adjudicator in the interim decision dated February 3, 2022. Consequently, I dismiss the landlords' application seeking a monetary order for unpaid rent with leave to reapply.

As the landlord's application was not successful, the filing fee will not be recovered.

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 03, 2022

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Residential Tenancy Branch