



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNRL, FFL

### Introduction

This hearing dealt with the Landlord's application under the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession under three 10 Day Notices to End Tenancy for Unpaid Rent or Utilities dated June 13, 2022 pursuant to section 55;
- a Monetary Order of \$3,100.00 for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the Tenant pursuant to section 72.

The Landlord attended this hearing and was given a full opportunity to be heard, to present affirmed testimony, and to make submissions.

The Tenant did not attend this hearing. I left the teleconference hearing connection open until 2:01 pm in order to enable the Tenant to call into the hearing scheduled to start at 1:30 pm. I confirmed that the correct call-in numbers and participant access code had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that the Landlord and I were the only ones who had called into the hearing.

### Preliminary Matter – Service of Dispute Resolution Documents

The Landlord testified that the notice of dispute resolution proceeding package (the "NDRP Package") was posted to the Tenant's door on July 13, 2022.

Sections 88 and 89 of the Act state as follows regarding service of documents:

### **How to give or serve documents generally**

88 All documents, other than those referred to in section 89 [special rules for certain documents], that are required or permitted under this Act to be given to or served on a person must be given or served 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 ordinary mail or 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 ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (j) by any other means of service provided for in the regulations.

### **Special rules for certain documents**

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*];
- (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.
- (3) A notice under section 87.5 [*notice of administrative penalty*] must be given in a manner referred to in subsection (1).

(emphasis added)

To summarize the above sections:

- Section 89(2) of the Act provides the acceptable service methods for a landlord's application for dispute resolution under sections 55, 56, or 56.1 of the Act, which relate to orders of possession or orders ending the tenancy.
- Section 89(1) of the Act provides the acceptable service methods for applications for dispute resolution generally, and decisions of the director to proceed with a review.
- Section 88 of the Act provides the acceptable service methods for documents other than those described in section 89 of the Act, which would include a document such as a notice to end tenancy for unpaid rent or utilities under section 46 of the Act.
- Only sections 88 and 89(2) include attaching to the door as an acceptable service method (see sections 88(g) and 89(2)(d)). Section 89(1) does not contain a similar provision.

In other words, an application for dispute resolution that is not for an order of possession or order ending the tenancy under sections 55, 56 or 56.1 of the Act must be served in accordance with section 89(1) of the Act, which does not permit service by attaching to the door.

I accept the Landlord's testimony that it is his practice to have his agents post documents to the door in order to avoid confronting tenants directly, and that the rental unit is located in a "tough" city with a "criminal element".

However, I find section 89(1) of the Act does not permit the Landlord to serve the Tenant with a monetary claim for unpaid rent under section 67 of the Act by posting a copy to the Tenant's door. As such, I find this portion of the Landlord's application has not been served in accordance with the Act.

Furthermore, I find there is insufficient evidence to confirm whether the Tenant was still residing in the rental unit at the time that the NDRP Package was posted to the Tenant's door. The Landlord testified that the rental unit was found abandoned on November 7, 2022 during a mandatory fire inspection, and the Tenant did not return the keys. The Landlord indicated that he did not know when the Tenant had vacated the rental unit. As such, I am unable to conclude that the Tenant is aware of this hearing and is sufficiently served with the NDRP Package.

Based on the foregoing, the Landlord's claim for unpaid rent is dismissed with leave to re-apply.

The Landlord is at liberty to re-apply to seek compensation within the applicable limitation periods and to apply for a substituted service order if necessary.

#### Preliminary Matter – Tenancy Has Ended

Based on the Landlord's testimony that the tenancy has ended, I find the Landlord does not require an order of possession for the rental unit as this time, such that this issue has become moot. Accordingly, the balance of the Landlord's application is dismissed without leave to re-apply.

Conclusion

The Landlord's claim for unpaid rent pursuant to section 67 is dismissed with leave to re-apply. Leave to re-apply does not extend any applicable time limits. The balance of the Landlord's claims on this application is dismissed without leave to re-apply.

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 02, 2022

---

Residential Tenancy Branch