



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR-DR, MNR-DR

### Introduction

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

- an order of possession for unpaid rent and utilities, pursuant to section 55; and
- a monetary order for unpaid rent and utilities, pursuant to section 67.

The tenant did not attend this hearing, which lasted approximately 15 minutes. The landlord, the landlord's three agents, "landlord JGO," landlord AG ("landlord's agent"), and "landlord JGA," and the landlord's English language translator ("translator") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing began at 11:00 a.m. and ended at 11:15 a.m. I monitored the teleconference line throughout this hearing. 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, her three agents, her translator, and I were the only people who called into this teleconference.

All hearing participants confirmed their names and spelling. The landlord's agent provided her email address for me to send a copy of this decision to the landlord after this hearing and the landlord agreed to same.

The landlord stated that she co-owns the rental unit with landlord JGO, who is her husband. She said that her three agents had permission to speak on her behalf at this hearing. She claimed that her translator, who is her daughter, had permission to assist her at this hearing. She provided the rental unit address. She identified the landlord's agent as the primary speaker for the landlord at this hearing.

Rule 6.11 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure* (“Rules”) does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, all hearing participants separately affirmed, under oath, that they would not record this hearing.

I explained the hearing process to all hearing participants. They had an opportunity to ask questions, which I answered. They did not make any adjournment or accommodation requests. The landlord’s agent confirmed that the landlord was ready to proceed with this hearing.

#### Preliminary Issue – Service of Interim Decision and Notice of Reconvened Hearing

This hearing was originally scheduled as a direct request proceeding, which is a non-participatory hearing. The direct request proceeding is based on the landlord’s paper application only, not any submissions from the tenant.

An “interim decision” and “notice of reconvened hearing,” both dated August 25, 2022, were issued by an Adjudicator to the landlord, for the direct request proceeding. The interim decision adjourned the landlord’s application from the direct request proceeding to this participatory hearing.

The interim decision states the following at page 2, as to why the application was adjourned to this participatory hearing:

*I find the landlord’s name on the tenancy agreement (Person J.Z.G.P.) does not match the landlord’s name on the Application for Dispute Resolution (Person Z.P.).*

*I also note that the special details section of the Proof of Service Notice to End Tenancy indicates that the 10 Day Notice was served to the tenant on April 17, 2022, and on May 20, 2022. However, the 10 Day Notice submitted by the landlord is dated June 8, 2022.*

*I find these discrepancies raise questions that can only be addressed in a participatory hearing.*

The landlord was required to serve the tenant with a copy of the interim decision, the notice of reconvened hearing, and all other required documents, within three days of

receiving it, as outlined in the interim decision itself. The interim decision states the following at page 3 (bold emphasis in original):

***Notices of Reconvened Hearing are enclosed with this interim decision. The applicant must serve the Notice of Reconvened Hearing, the interim decision, and all other required documents, upon each tenant within three (3) days of receiving this decision in accordance with section 89 of the Act.***

The landlord's agent stated that the tenant was served with the above documents by registered mail on August 26, 2022, to the rental unit where the tenant is still residing. She provided a Canada Post registered mail tracking number during this hearing.

In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the interim decision and notice of reconvened hearing on August 31, 2022, five days after its registered mailing.

#### Preliminary Issue – Service of Landlord's Original Direct Request Application

The landlord's agent said that neither she, nor the landlord or her agents, had a registered mail tracking number for service of the landlord's original direct request application. She did not provide a date of service for the landlord's original direct request application.

Section 89(1) of the *Act* outlines the methods of service for an application for dispute resolution, which reads in part as follows (my emphasis added):

*89 (1) An application for dispute resolution ..., 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].*

Residential Tenancy Policy Guideline 12 states the following, in part (my emphasis added):

*Registered mail includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a **named person** is available.*

*Proof of service by Registered Mail should include the **original Canada Post Registered Mail receipt containing the date of service, the address of service, and that the address of service was the person's residence at the time of service**, or the landlord's place of conducting business as a landlord at the time of service **as well as a copy of the printed tracking report**.*

I find that the landlord did not serve the tenant with the landlord's original direct request application, as required by section 89 of the *Act*, Rule 3.1 of the *RTB Rules*, and Residential Tenancy Policy Guideline 12.

The landlord and her agents did not provide a service date or registered mail tracking number to confirm service, during this hearing. The tenant did not attend this hearing to confirm service of the above documents.

The landlord and her agents were given ample time of 15 minutes during this hearing to provide evidence regarding service.

The landlord originally filed the direct request application on May 28, 2022. The interim decision and notice of reconvened hearing are both dated August 25, 2022. This hearing occurred on January 10, 2023.

The landlord had ample time from May 28, 2022 to January 10, 2023, a period of approximately 7.5 months, to provide the above information regarding service of the landlord's original direct request application.

I notified the landlord and her agents that the landlord's entire application was dismissed with leave to reapply. The landlord's agent confirmed her understanding of same.

### Conclusion

The landlord's entire application 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 10, 2023

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Residential Tenancy Branch