



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

OPL, FFL

### Introduction

The hearing was convened in response to an Application for Dispute Resolution filed by the Landlord, in which the Landlord applied for an Order of Possession for Landlord's Use of Property and to recover the fee for filing this Application for Dispute Resolution.

### Issue(s) to be Decided

Is the Landlord is entitled to an Order of Possession and to recover the filing fee?

### Background and Evidence

The Landlord stated that each Respondent was served with the Dispute Resolution Package, via registered mail, although he cannot recall the date of service.

The Landlord stated that he does not know if he provided the Residential Tenancy Branch with Canada Post documentation that shows each Respondent was served with the Dispute Resolution Package by registered mail. I was unable to find such documents in the documents submitted by the Landlord.

The Landlord stated that he is unable to provide Canada Post tracking numbers for the aforementioned mailings.

## Analysis

The purpose of serving the Dispute Resolution Package to tenants is to notify them that a dispute resolution proceeding has been initiated and to give them the opportunity to respond to the claims being made by a landlord. When a landlord files an Application for Dispute Resolution in which the landlord has applied for an Order of Possession, the landlord has the burden of proving that the tenant was served with the Application for Dispute Resolution Package in accordance with section 89(2) of the *Residential Tenancy Act (Act)*.

Section 89(2) of the *Act* stipulates, in part, that a landlord must serve a tenant with an Application for Dispute Resolution 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; or
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

Section 43(3) of the *Residential Tenancy Regulations* stipulates that documents described in section 89(2) of the *Act* may be served to a tenant by emailing a copy of the document to an email address provided as an address for service by the tenant.

There is no evidence to show that the Dispute Resolution Package was served to the Respondents (Tenants) pursuant to sections 89(2)(a), 89(2)(c), 89(2)(d) of the *Act* or section 49(3) of the *Residential Tenancy Regulations*.

I find that the Landlord has submitted insufficient evidence to establish that the Dispute Resolution Package was served to the Respondents (Tenants) pursuant to section 89(2)(b) of the *Act*. In reaching this conclusion I was heavily influenced by the absence of any Canada Post documentation that corroborates the Landlord's testimony that the Dispute Resolution Package was sent by registered mail. When such documentation is available, I find it reasonable to expect those documents to be submitted.

In some circumstances I find it reasonable to accept a Canada Post tracking number as a means of establishing that a tenant has been served with documents. In these circumstances, the Landlord was unable to provide Canada Post tracking numbers to corroborate his testimony regarding service. In the absence of this information, I am not satisfied the Dispute Resolution Package was served to the Respondents.

As the Landlord has failed to establish that the Dispute Resolution Package was served to the Respondents, I am unable to proceed with the hearing in the absence of the Respondents/Tenants. I therefore dismiss the Application for Dispute Resolution, with leave to reapply.

### Conclusion

The Application for Dispute Resolution is dismissed, with leave to reapply. The Landlord retains the right to file another Application for Dispute Resolution in regard to these matters.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: January 03, 2023

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Residential Tenancy Branch