



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding WOODSMERE HOLDINGS CORP.  
and [tenant name suppressed to protect privacy]

## **DECISION**

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

### **Introduction**

On December 1, 2022, 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:

The landlord submitted two different versions of a 10 Day Notice dated October 4, 2022: one for \$1,643.00 and one for \$3,286.00.

The witness statement on the Proof of Service Notice to End Tenancy doesn't specify whether they observed the landlord serve the \$1,643.00 10 Day Notice, the \$3,286.00 10 Day Notice, or both 10 Day Notices.

I find I am not able to confirm which version(s) of the 10 Day Notice was posted to the tenant's door on October 4, 2022.

I also note that the landlord submitted a copy of two payment plans, listing different repayment schedules for the rent.

I find I am not able to confirm precisely what amount of rent was owing at the time the 10 Day Notice was issued to the tenant.

I have been delegated authority under the *Act* to consider the landlord's application for:

- an Order of Possession for unpaid rent pursuant to section 55; and
- a monetary order for unpaid rent pursuant to section 67

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:15 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m.

The landlord was represented at the hearing by sr. property manager DL. The landlord testified that the tenant vacated the rental unit on October 31, 2022 and confirmed he

did not require an Order of Possession. He only seeks a monetary order for unpaid rent.

The landlord testified that on December 1, 2022, he served the tenant with a copy of the adjudicator's interim decision and the Notice of Dispute Resolution Proceedings via registered mail at the rental unit that the tenant had vacated on October 31 2022. The tracking number for the mailing is recorded on the cover page of this decision. The landlord testified that the tenant did not provide a forwarding address when he vacated the rental unit however the landlord surmises that the tenant would have had his mail forwarded to him at his new residence.

### Analysis

Rule 3.5 of the Residential Tenancy Branch Rules of Procedure states:

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

Section 89 of the *Act* establishes the following Special Rules for certain documents, which include an application for dispute resolution:

### **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.

Residential Tenancy Branch Policy Guideline PG-12 [service provisions] states:

*All parties named on an application for dispute resolution must receive notice of the proceedings. Where more than one party is named on an application, each party must be served separately. Failure to serve documents in a way recognized by the Legislation may result in the hearing being adjourned, dismissed with leave to reapply, or dismissed without leave to reapply.*

...

*Where a landlord is serving a tenant by Registered Mail, the address for service must be where the tenant resides at the time of mailing, or the forwarding address provided by the tenant*

I am not satisfied the tenant was sufficiently served with the Notice of Dispute Resolution Proceedings and the interim decision when the landlord sent them to the tenant's previous residential address. Although the landlord argues that the tenant ought to have had his mail forwarded to his new address via Canada Post, there is no evidence before me that the tenant ever did so. Consequently, I dismiss the landlord's application seeking a monetary order for unpaid rent with leave to reapply.

#### Conclusion

I order that the tenancy ended on October 31, 2022 pursuant to section 44(1)(f).

The landlord's application seeking a monetary order for unpaid rent 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 31, 2023

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Residential Tenancy Branch