



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CONCERT REALTY SERVICES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: OPR, MNR, MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord on November 1, 2016. The Landlord applied for an Order of Possession and a Monetary Order for unpaid rent. The Landlord also applied to keep the Tenant’s security deposit and to recover the filing fee from the Tenant.

### Preliminary Issues and Findings

An agent for the Landlord appeared for the hearing and provided affirmed testimony. However, there was no appearance for the Tenant during the 52 minute hearing or any submission of evidence prior to the hearing. Therefore, I turned my mind to the service of documents by the Landlord. The Landlord’s agent testified that she posted a copy of the Application and the Notice of Hearing documents to the Tenant’s rental unit door on November 1, 2016. The Landlord testified that she called the Tenant several times to inform him of the hearing and that the documents were posted to the door but there was no answer from the Tenant. The Landlord’s agent testified that she was informed by an Information Officer of the Residential Tenancy Branch that she could serve the Application to the Tenant by posting it to the Tenant’s door.

The Landlord’s agent also testified that she had given notice of entry to the rental unit two weeks prior to this hearing and discovered that the Tenant had abandoned the rental unit. Therefore, the Landlord did not require an Order of Possession but wanted to proceed with the monetary claim. The Landlord testified that the Tenant did not move out pursuant to the notice to end tenancy for unpaid rent which was served to the Tenant. Therefore, the Landlord had to make the Application.

Section 89(1) of the *Residential Tenancy Act* (the “Act”) provides the methods in which an applicant may serve the respondent with notice of a hearing and the claim being

brought against them. In this case, Section 89(1) of the Act does not provide an applicant with the option of serving documents for a hearing by posting them to the door. Section 89(2) (d) does allow an applicant to service notice of a hearing by posting those documents to the door, but this is **only** in relation to a landlord's application for an Order of Possession and does not apply to a monetary claim.

Based on the foregoing, as the Tenant had vacated the rental unit, the Landlord's Application for an Order of Possession was dismissed. However, as the Landlord failed to serve the Tenant properly with the monetary claim portion of the Application, I am unable to deal with the monetary claim as service of the monetary claim has not been completed pursuant to the service provisions of the Act. Neither was the Landlord's agent able to provide other evidence to show that the Tenant was aware of the monetary claim being brought against him. As I did not deal with the Landlord's monetary claim, I dismiss it with leave to re-apply. The Landlord must ensure that service of the documents for future Applications must be effected pursuant to the Act so a party is put on proper notice of a claim being made against them.

In relation to the Landlord's claim for the filing fee, I accept the Tenant failed to move out of the rental unit pursuant to the notice to end tenancy for unpaid rent. I also accept the oral evidence in this case that the Landlord had to file the Application seeking an Order of Possession. I find that in this case if the Landlord failed to file the Application, the Tenant may have continued to overhold the tenancy. Therefore, I grant the Landlord the filing fee with respect to their Application for an Order of Possession. The Landlord may achieve this relief by deducting \$100.00 from the Tenant's security deposit pursuant to Section 72(2) (b) of the Act.

The Landlord remained on the line after the hearing had concluded to obtain information regarding a landlord's obligation under the Act with respect to condition inspections and the return and retention of a tenant's security and pet damage deposit at the end of a tenancy. 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: December 19, 2016

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Residential Tenancy Branch