



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR-DR, OPRM-DR, FFL

### Introduction

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

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two tenants did not attend this hearing, which lasted approximately 19 minutes. The male landlord ("landlord"), the "female landlord," and the landlords' agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he had permission to represent the female landlord named in this application (collectively "landlords"). The female landlord did not testify at this hearing. The landlord stated that his agent had permission to represent both landlords at this hearing.

### Preliminary Issue – Direct Request Proceeding and Service

This hearing was originally scheduled as a direct request proceeding, which is a non-participatory hearing. The direct request proceeding is based on the landlords' paper application only, not any submissions from the tenants. An "interim decision," dated April 3, 2020, was issued by an Adjudicator for the direct request proceeding. The interim decision adjourned the direct request proceeding to this participatory hearing.

The landlords were required to serve the tenants 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 landlords' agent did not state when the landlords received the interim decision. She claimed that she sent the above documents by registered mail separately to the tenants on April 6, 2020. The landlords did not provide Canada Post receipts or tracking reports with their application. She provided two Canada Post tracking numbers verbally during the hearing. She indicated that both mail packages were delivered to a mailbox, but she asked for signatures to be obtained.

I looked up the tracking numbers on the Canada Post website during the hearing and it indicated for both mail packages on April 14, 2020: "Delivered to your community mailbox, parcel locker or apt./condo mailbox, Item out for delivery, Delivery pending." I notified the landlords' agent and she maintained that she would have to call Canada Post after the hearing to determine why they dropped the packages in the mailbox instead of obtaining signatures. She stated that she did not have confirmation that the tenants signed for the mail packages.

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.**

Accordingly, I find that the tenants were not served with the interim decision and notice of reconvened hearing, as per section 89 of the *Act*. The landlords were unable to confirm delivery to named people, confirm that the named tenants signed for the packages, or that they had the ability to sign for them, as per Residential Tenancy Policy Guideline 12. The Canada Post tracking information indicates that delivery was made to a mailbox, it was out for delivery and the delivery was pending, as of April 14, 2020, which is the week prior to this hearing on April 21, 2020. The tenants did not attend this hearing to confirm service.

I notified the landlords' agent that the landlords' application was dismissed with leave to reapply, except for the filing fee. I informed her that the landlords would be required to file a new application, pay another filing fee and provide proof of service at the next hearing, if the landlords choose to pursue this matter further. I also notified the landlords' agent that she had to confirm the correct legal names of the tenants, prior to filing another application, since she indicated one name was different during the hearing. She confirmed her understanding of same.

### Conclusion

The landlords' application to recover the \$100.00 filing fee is dismissed without leave to reapply.

The remainder of the landlords' 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: April 21, 2020

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Residential Tenancy Branch