



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DIRECT REQUEST DECISION

Dispute Codes : OPR, MNR

### Introduction

The Hearing proceeded by way of Direct Request Proceeding, pursuant to section 55(4) of the Act, and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession and a monetary order for rental arrears.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on July 29, 2011 at 10:00 a.m., the landlord served the tenant with the Notice of Direct Request by posting it on the tenant's door. Posted Notices are deemed to be served in three days.

The landlord also indicated that the Notice of Direct Request was served to the tenant by registered mail. The landlord had attached a photocopy the registered mail tracking slip which documented the last name of the party served. I note that there was not any address shown on the registered mail tracking slip.

### Preliminary Issue

Sections 88 and 89 of the Act determine the method of service for documents. The Tenant has applied for a Monetary Order under section 67 of the Act which requires that the landlord serve the tenant with hearing documents as set out under Section 89(1). This requires service in one of the following ways:

- (a) by leaving a copy with the person, (personal service);*
- (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].*

In this case I find that the landlord has not sufficiently proven service by registered mail. I find that the landlord did prove that the Notice of Direct Request Proceeding was served by posting it. Therefore, the landlord served the hearing documents in a manner not in compliance with any of the above methods listed under section 89(1) of the Act with respect to seeking an order for monetary compensation. Therefore it is not possible to proceed with the monetary claim portion of the landlord's application.

However Section 89(2) of the Act does allow an application for an Order of Possession pursuant to section 55 of the Act, to be served by "attaching a copy to a door or other conspicuous place at the address at which the tenant resides".

Therefore, I find that the portion of this application pertaining to the Order of Possession, has been duly served under the Act and the matter of whether or not the landlord is entitled to an Order of Possession will be determined.

#### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an Order of Possession based on the Ten Day Notice to End Tenancy for Unpaid Rent pursuant to section 55 of the *Residential Tenancy Act (the Act)*. I have reviewed all documentary evidence.

#### Proof of Service of 10 Day Notice to End Tenancy

The landlord submitted a copy of the Notice to End Tenancy for Unpaid Rent and a "Proof of Service" form stating that the Notice was served to the tenant by posting it on the door in front of a witness, on July 19, 2011 at 9:00 a.m.

The purpose of serving documents under the Act is to notify the person of a failure to comply with the Act and of their rights in response. The landlord, seeking to end the tenancy has the burden of proving that the tenant was served with the Notice to End Tenancy and I find that the landlord has met this burden.

#### Analysis

Submitted into evidence was a copy of the tenancy agreement signed on May 7, 2010 showing rent set at \$314.00 per month. Although no copy of the tenant's rent account ledger was submitted, the landlord indicated in the Application for Direct Request that the tenant was in arrears for \$635.00.

Based on the evidence submitted by the landlord, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent. The tenant has not paid all of the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective

date of the Notice. Given the above facts I find that the landlord is entitled to an Order of Possession.

**Conclusion**

I hereby issue an Order of Possession in favour of the landlord effective two days after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

Due to the manner of service of the landlord's application and Notice of Direct Request, the portion of the landlord's application seeking monetary compensation 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: August 09, 2011.

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Residential Tenancy Branch