



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

OPR, MNR

### Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to sections 55(4) and 74(2) of the *Residential Tenancy Act (Act)*, and dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession and a monetary Order.

### Issue(s) to be Decided

Is the Landlord is entitled to an Order of Possession for unpaid rent and to a monetary Order for unpaid rent, pursuant to sections 55 and 67 of the *Act*?

### Background and Evidence

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on February 20, 2013 the Landlord served the Tenant with the initials "S.S." with the Notice of Direct Request Proceeding by registered mail. The Landlord submitted a copy of a Canada Post Receipt, with a tracking number, which corroborates that a package was mailed on that date.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on February 20, 2013 the Landlord served the Tenant with the initials "J.S." with the Notice of Direct Request Proceeding by registered mail. The Landlord submitted a copy of a Canada Post Receipt, with a tracking number, which corroborates that a package was mailed on that date.

I note that the service address for the Tenants listed on the Application for Dispute Resolution is different than the address for the rental unit. There is a note in the file that indicates the Tenants have sublet the rental unit, which explains this discrepancy.

There is nothing in the Application for Dispute Resolution which declares where the Landlord mailed the Notices of Direct Request Proceedings, although it is reasonable to conclude that the documents were mailed to the service address provided for the Tenant. There is nothing in the Application for Dispute Resolution which explains how the Landlord obtained this service address for the Tenants or which indicates that the Tenants are residing at this address.

### Analysis

The purpose of serving the Notice of Direct Request Proceeding to tenants is to notify them that a direct request proceeding has been initiated. When a landlord files an Application for Dispute Resolution in which the landlord has applied for a monetary Order, the landlord has the burden of proving that the tenant was served with the Application for Dispute Resolution in compliance with section 89(1) of the *Residential Tenancy Act (Act)*.

Section 89(1) 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 person;
- (c) by sending a copy by registered mail to the address at which the person resides;
- (d) by sending a copy by registered mail to a forwarding address provided by the tenant;
- or
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

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 in compliance with section 89(2) of the *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*].

The Landlord submitted no evidence to show that either Tenant was personally served with the Notice of Direct Request Proceeding and I therefore cannot find that either Tenant was served in accordance with section 89(1)(a) or 89(2)(a) of the *Act*.

The Landlord submitted no evidence to show that either Tenant lives at the service address listed on the Application for Dispute Resolution and I therefore cannot conclude that either Tenant was served in accordance with section 89(1)(c) or 89(2)(b) of the *Act*.

The Landlord submitted no evidence to show that the service address listed on the Application for Dispute Resolution was provided as a forwarding address for the Tenant and I therefore cannot conclude that either Tenant was served in accordance with section 89(1)(d) of the *Act*.

The Landlord submitted no evidence to show that the Notice of Direct Request Proceeding was posted at the rental unit or left with an adult at the rental unit and I therefore cannot find that either Tenant was served in accordance with section 89(2)(c) or 89(2)(d) of the *Act*.

There is no evidence that the director authorized the Landlord to serve the Application for Dispute Resolution to either Tenant in an alternate manner, therefore I find that neither Tenant has been served in accordance with section 89(1)(e) or 89(2)(e) of the *Act*.

The Landlord submitted no evidence to cause me to conclude that either Tenant received the Application for Dispute Resolution and therefore I cannot conclude that the Application has been sufficiently served pursuant to sections 71(2)(b) or 71(2)(c) of the *Act*.

### Conclusion

As the Landlord has failed to establish that the Notice of Direct Request Proceeding was properly served to either Tenant, I dismiss the Landlord's Application for Dispute Resolution, 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: February 21, 2013

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Residential Tenancy Branch

