



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Nacel Properties Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR

### Introduction

This matter proceeded by way of Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the “Act”), and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on unpaid rent and a monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 27, 2013 at 5:31 p.m., the landlord served the tenant with the Notice of Direct Request Proceeding by posting it on the tenant’s door. The landlord also noted that attempts to deliver this material to the tenant were made on March 26 at 3:30 p.m., on March 26 at 9:10 p.m., and March 27 at 9:20 a.m., to no avail.

### Analysis – Service of Landlord’s Application

Section 89(1) of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution for a monetary Order:

*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;...*

I dismiss the landlord’s application for a monetary Order with leave to reapply because I find that the landlord has not served the tenant with the landlord’s application for a monetary Order in a manner required by section 89(1) of the *Act*.

The Proof of Service document submitted to support the landlord’s application for both a monetary Order and an Order of Possession specifically notes the following:

**Do not use this method if requesting a Monetary Order**

However, section 89(2) of the *Act* does allow a landlord to serve a tenant with an application for dispute resolution seeking an end to tenancy and an Order of Possession for unpaid rent by posting it on the tenant's door.

From the landlord's application, it is unclear as to whether the landlord's representative who signed the Proof of Service document attempted to serve these documents on all of the occasions noted on the Proof of Service document or if a mix of the landlord's representatives attempted to do so. The landlord's representative took care to include a signature of an assistant who witnessed the posting of the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenant's door at 2:15 p.m. on March 6, 2013. However, the landlord did not include any such witnessed statement regarding the posting of the Notice of Direct Request on the tenant's door on March 27, 2013.

Under these circumstances, I find that the landlord has failed to adequately demonstrate that the tenant has been served with notice of the landlord's application for an end to this tenancy and an Order of Possession. I dismiss the landlord's application for an end to this tenancy and a monetary Order with leave to reapply as I am not satisfied by the evidence before me that the landlord has provided adequate service of this application to the tenant.

Conclusion

I dismiss the landlord's application 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 03, 2013

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Residential Tenancy Branch

