



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding DC Johnstone Holdings Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

OPR, MNR

### Introduction

This matter was conducted 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 and a monetary order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on May 21, 2013 the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail to the rental unit address. The landlord provided a Canada Post receipt and tracking number as evidence of service.

Section 90 of the Act determines that a document is deemed to have been served on the 5<sup>th</sup> day after mailing.

Based on the written submissions of the landlord, I find that the tenant has been served with the Direct Request Proceeding documents.

### Issue(s) to be Decided

Is the landlord entitled to an Order of possession?

Is the landlord entitled to monetary compensation for unpaid rent?

### Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the tenant;
- A copy of a residential tenancy agreement which was signed by the parties on June 21, 2011, indicating a monthly rent of \$825.00 due on or before the 1<sup>st</sup> day of the month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on May 11, 2013 with a stated effective vacancy date of May 21, 2013, for \$800.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant has failed to pay rent owed and was served the 10 Day Notice to End Tenancy for Unpaid Rent by personal delivery to the tenant's boyfriend, who told the landlord he would give the

tenant the Notice. Service to the boyfriend occurred on May 11, 2013 at 6 p.m. A proof of service document was supplied that appears to have been signed by the tenant's boyfriend.

### Analysis

I have reviewed all documentary evidence and find that the landlord has failed to establish that the tenant has been served with the 10 Day Notice to End Tenancy for Unpaid Rent that was given to the tenant's boyfriend.

There was no evidence before me as to the age of the boyfriend or any information that indicated he resides with the tenant. Section 88(e) of the Act provides an acceptable method of service:

*(e) by leaving a copy at the person's residence with an adult who apparently resides with the person*

In the absence of evidence that the person served is an adult who resides with the tenant I find that service of the Notice to end tenancy cannot be proven.

Therefore, I find that the portion of the application requesting an Order of possession is dismissed with leave to reapply. Service of the Notice will need to be proven as having occurred in accordance with the Act, or, in the alternative, may be served again.

The tenant was served with Notice of this proceeding, but as the Direct Request Proceeding is held based on a Notice to End Tenancy, which informs the tenant of a right to dispute the amount claimed as owed, I find that the claim for unpaid rent is dismissed with leave to reapply.

### Conclusion

The 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: May 28, 2013

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Residential Tenancy Branch