



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR

### Introduction

This matter proceeded by way of an *ex parte* 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 landlords for an Order of Possession based on unpaid rent and a monetary Order.

The landlord’s agent MLL (the agent) submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 17, 2014, she sent both Respondents the Notices of Direct Request Proceedings by registered mail. The agent provided a copy of the Canada Post Tracking Number to confirm these registered mailings. Based on the written submissions of the agent and in accordance with sections 89 and 90 of the *Act*, I find that both Respondents have been deemed served with the Direct Request Proceeding documents on March 24, 2014, the fifth business day after their registered mailing.

### Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

### Background and Evidence

The landlords submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding served to the Respondents;
- A copy of the Residential Tenancy Agreement (the Agreement) which was signed by landlords’ agent NJS and Respondent RB, identified as the tenant on that Agreement, indicating a monthly rent of \$1,900.00 due on the 1st day of the month;
- A copy of a September 4, 2013 email from the landlord’s agent NJS (NJS) apparently agreeing to a reduction in the monthly rent owing by \$100.00 to \$1,800.00; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) allegedly sent by registered mail on March 4, 2014, with a stated effective vacancy date of March 19, 2014, for \$2,500.00 in unpaid rent.

The signed Proof of Service document submitted by NJS identified a number for tracking this registered mailing but did not provide the requested Canada Post registered mail receipt or tracking report. This Proof of Service document was only sent to Respondent RB. The Notice states that the Respondent/Tenant had five days from the date of service to pay the rent identified as owing in full or apply for Dispute Resolution or the tenancy would end.

### Analysis

I first note that the landlords have not provided copies of any signed written documentation that would connect Respondent JL from a contractual perspective to this tenancy in any way. Although the landlords appear to be maintaining that Respondent JL is an approved sub-tenant of Respondent RB, they have produced nothing to demonstrate that this is so or that they have any direct contractual arrangement with him entitling them to obtain their requested monetary award. As such, I dismiss the landlords' application naming JL as a Respondent with leave to reapply.

Section 88 of the *Act* establishes the methods by which a landlord can serve a tenant with a notice to end tenancy. While service by registered mail is one of these methods, the landlords have not produced copies of the required documentation from Canada Post to show that the 10 Day Notice was actually served to Respondent RB, the only tenant signatory to the Agreement between the parties. Without this documentation, I am not satisfied that the landlords have demonstrated that they have served the 10 Day Notice in accordance with section 88 of the *Act*. Under these circumstances, I dismiss the landlord's application for an Order of Possession based on the 10 Day Notice with leave to reapply. If they cannot provide sufficient evidence to demonstrate their service of the existing 10 Day Notice to Respondent RB, their tenant, they may need to issue a new 10 Day Notice to him.

I find that the written evidence submitted by the landlords in support of their application for a monetary award against Respondent RB is confusing and incomplete. While the Agreement establishes the monthly rent to be paid by RB is \$1,900.00, they have submitted an email maintaining that the actual rent has been reduced to \$1,800.00. They provided no Rent Ledger to show an actual breakdown of what has been paid during the latter stages of this tenancy nor who has made these payments. Although it would seem that \$550.00 was paid by someone towards this tenancy in both February and March 2013, there is no indication as to who made these payments, whether these payments were made to continue that individual's tenancy (or sub-tenancy) or whether that individual realized that the tenancy might be ending if the remainder of the rent was not paid. The landlords have provided virtually no documentation regarding the sub-tenants or what legal right they had to include Respondent JL in their application. In fact, I note with interest that Respondent JL is not even one of the two individuals identified as also residing at the rental premises with Respondent RB in the original

Agreement. If there has been some additional agreement entered into by the landlords to allow Respondent JL to be added to this Agreement, the landlords have not entered it into written evidence. While there may very well be rent owing for this tenancy, the landlord's application does not establish who owes this rent, whether there are landlord approved sub-tenants or whether the sole relationship between the sub-tenant(s) is between the tenant and the sub-tenant. The landlords have attempted to include Respondent JL in this matter, but have produced little evidence to clarify whether they have any direct tenancy relationship with him. Due to the lack of information supplied by the landlord and for the reasons outlined above, I also dismiss the landlord's application for a monetary award against Respondent RB with leave to reapply.

I encourage the landlords to either provide considerably more written evidence if their wish is to pursue a new application by way of the RTB's direct request process or apply for a standard participatory hearing. Based on the apparent complexity of this matter, the landlords may wish to pursue a participatory hearing in order to answer questions that an Arbitrator appointed under the *Act* may need to have answered before he or she can make a determination regarding their application.

#### 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: March 24, 2014

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Residential Tenancy Branch

