



# 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 landlord for an Order of Possession based on unpaid rent and a monetary Order.

### Preliminary Issue: Service of Notice of Direct Request Proceeding

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 9, 2014, the landlord posted the Notice of Direct Request Proceeding including a copy of the landlord’s application for dispute resolution to the tenant’s door. Notice of this proceeding must be provided in substantive compliance with section 89 of the *Act*.

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;*
- (e) as ordered by the director under section 71(1) [director’s orders: delivery and service of document]...*

The landlord has not served the tenant in a manner required by section 89(1) of the *Act*. As I am not satisfied that the tenant was properly served with the landlord's application for dispute resolution seeking a monetary Order, I dismiss the landlord's application for a monetary Order with leave to reapply.

Section 89(2) of the *Act* establishes separate Special rules for serving a tenant with an application for an Order of Possession. Section 89(2)(d) of the *Act* allows a landlord to serve a tenant with an application for an Order of Possession by posting a copy of the application and Notice of Direct Request Proceedings on a tenant's door. Based on the landlord's written submission and in accordance with sections 89(2)(d) and 90 of the *Act*, I find that the tenant was deemed served with the Notice of Direct Request Proceedings including a copy of the landlord's application for dispute resolution seeking an Order of Possession on November 12, 2014, the third day after its posting.

#### Issues to be Decided

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

#### Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding served to the tenant;
- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on April 27, 2012, indicating a monthly rent of \$1,200.00 with a rent increase document dated July 2014, which indicated a current monthly rent of \$1,248.00 due on the 1st day of the month for a tenancy commencing on May 1, 2012;
- A Monetary Order Worksheet showing the rent owing and paid during this tenancy; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) posted on the tenant's door on October 28, 2014, with no stated effective vacancy date, for \$3,096.00 in unpaid rent and \$769.00 in unpaid utilities.

Witnessed documentary evidence filed by the landlord indicates that the tenant failed to pay all outstanding rent was served by posting the 10 Day Notice to the tenant's door at 9:00 p.m. on November 9, 2014. Notice to vacate the rental unit must be provided in substantive compliance with the *Act*.

### Analysis

The Notice states that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end. The tenant did not apply to dispute the 10 Day Notice within five days from the date of service.

### **10 Day Notice Requirements**

Section 46(1) of the *Act* establishes how a landlord may end a tenancy for unpaid rent "by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice." Section 46(2) of the *Act* requires that "a notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

Section 52 of the *Act* reads in part as follows:

- 52     *In order to be effective, a notice to end tenancy must be in writing and must...*
- (a) be signed and dated by the landlord or tenant giving the notice,*
  - (b) give the address of the rental unit,*
  - (c) state the effective date of the notice,*
  - (d) except for a notice under section 45(1) or (2) [tenant's notice], state the grounds for ending the tenancy, and*
  - (e) when given by a landlord, be in the approved form.*

Since the landlord failed to identify an effective date in the 10 Day Notice, the landlord has not complied with the statutory requirement established under section 52(c) of the *Act*. I do not find that the tenant has been served with a valid 10 Day Notice that meets the requirements of sections 46(2) and 52(c) of the *Act*. I dismiss the landlord's application to end this tenancy and obtain an Order of Possession based on the existing 10 Day Notice without leave to reapply.

Conclusion

I dismiss the landlord's application for a monetary Order with leave to reapply.

I dismiss the landlord's application to obtain an Order of Possession based on the existing 10 Day Notice without leave to reapply. The 10 Day Notice issued on October 28, 2014 is of no force or effect. This tenancy continues.

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: November 28, 2014

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Residential Tenancy Branch

