



# Dispute Resolution Services

Page: 1

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.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that the landlord served the tenant with the Notice of Direct Request Proceeding by way of registered mail. The landlord provided a copy of a Canada Post Expedited Parcel slip containing the Tracking Number to confirm this mailing. The Proof of Service form also establishes that the service was witnessed by “AL” and a signature for AL is included on the form.

### Issue(s) to be Decided

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 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 December 6, 2014, indicating a monthly rent of \$775.00 due on the first day of the month for a tenancy commencing on November 21, 2014;
- A Monetary Order Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$2,062.50 for outstanding rent owing as of February 10, 2015.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated January 3, 2015, which the landlord states was served to the tenant on January 4, 2015, for \$1,087.50 in unpaid rent due on January 1, 2015, with a stated effective vacancy date of January 3, 2015; and

- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenant by way of posting it to the door of the rental unit 10:00 am on January 4, 2015. The Proof of Service establishes that the service was witnessed by "AL" and a signature for AL is included on the form.
- A letter dated February 28, 2015 from the landlord stating that the tenant vacated the rental unit of February 15, 2015. The landlord no longer needs an Order of Possession but wishes to pursue the monetary Order by way of the Direct Request process. Therefore, I will consider this application for only a monetary Order.

The Notice restates section 46(4) of the Act which provides that the tenant had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the effective date of the Notice. The tenant did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenant did not pay the rental arrears.

### Analysis

Direct Request proceedings are *ex parte* proceedings. In an *ex parte* proceeding, the opposing party is not invited to participate in the hearing or make any submissions. As there is no ability for the tenants to participate, there is a much higher burden placed on landlords in these types of proceedings than in a participatory hearing. This higher burden protects the procedural rights of the excluded party and ensures that the natural justice requirements of the Residential Tenancy Branch are satisfied.

In this type of matter, the landlord must prove they served the tenant with the Notice of Direct Request Proceeding, the Notice, and all related documents with respect to the Direct Request process, in accordance with the Act and Policy Guidelines. In an *ex parte* Direct Request Proceeding, the onus is on the landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the landlord cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

I have reviewed all documentary evidence provided by the landlord. Subsection 89(1) of the Act provides the approved methods by which an application for dispute resolution for a monetary Order can be served. Subsection 89(1) provides, in part, as follows:

**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:

(c) by sending a copy by registered mail to the address at which the person resides...

On the Proof of Service of the Notice of Direct Request Proceeding form, the landlord has indicated that the Direct Request Proceeding documents were served by way of registered mail. However, the evidentiary material provided by the landlord does not demonstrate that the Direct Request Proceeding documents were served by way of registered mail. The Canada Post tracking slip provided by the landlord is for a service identified as "Expedited Parcel". The

tracking number associated with this service can be used on the Canada Post website to acquire more information about the mailing history. The Canada Post website lists this service not as registered mail, but as "Expedited Parcel". Unlike Registered Mail, this service does not appear to demonstrate that the date on which the recipient received the mailed item and does not require that the recipient sign-for the mailed item.

In a Direct Request proceeding, if the landlord conveys that service of the Direct Request Proceeding documents were served by way of registered mail, the landlord must prove the tenant was served with the Notice of Direct Request proceeding with all the required inclusions as indicated on the Notice as per subsection 89(1) of the *Act*, which permits service by "sending a copy by registered mail to the address at which the person resides." The definition of registered mail is set out in section 1 of the *Act* as "any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available."

I find that the tracking number provided by the landlord on the Proof of Service of the Notice of Direct Request Proceeding form is for a package associated with Canada Post's "Expedited Parcel" service, which may or may not require a signature from the recipient to confirm delivery of the mailed item. In this case, Canada Post's online tracking service shows that a signature was not required for the delivery of this "Expedited Parcel" mailing and, as such, this mailing does not meet the definition of registered mail as defined under the *Act*. I also find that on the Proof of Service of the Notice of Direct Request Proceeding form, the landlord did not indicate the date on which service was attempted. Since I find that the landlord has not served the tenant with the notice of this application in accordance with subsection 89(1) of the *Act*, I dismiss the landlord's application for a monetary Order with leave to reapply.

### Conclusion

The landlord's application for a monetary Order is dismissed with leave to reapply.

The landlord's application for an Order of Possession based on the 10 Day Notice is withdrawn.

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 10, 2015

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Residential Tenancy Branch

