



# 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 two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on March 5, 2015, the landlord served the above-named tenants with the Notice of Direct Request Proceeding via registered mail. The landlord provided two copies of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received 5 days after service.

Based on the written submissions of the landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the tenants have been deemed served with the Direct Request Proceeding documents on March 10, 2015, the fifth day after their registered mailing.

### Issue(s) to be Decided

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

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:

- Two copies of the Proof of Service of the Notice of Direct Request Proceeding served to the tenants;
- A copy of a residential tenancy agreement which was signed by the landlord and the female tenant on October 30, 2014, indicating a monthly rent of \$1,150.00

due on the first day of the month for a tenancy commencing on November 1, 2014;

- A Monetary Order Worksheet showing the rent owing and paid during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$2,450.00 for outstanding rent owing for December 2014, January 2015, and February 2015;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated January 2, 2015 (the first Notice), which the landlord states was served to the tenants on January 2, 2015, for \$1,300.00 in unpaid rent due on January 1, 2015;
- A copy of the Proof of Service of the first Notice dated January 2, 2015, showing that the landlord served the Notice to the tenants by way of posting it to the door of the rental unit at 1:00 pm on January 2, 2015. The Proof of Service establishes that the service was witnessed by "IS" and a signature for "IS" is included on the form
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated January 1, 2015 (the second Notice), which the landlord states was served to the tenants on February 3, 2015, for \$2,450.00 in unpaid rent due on February 1, 2015; and
- A copy of the Proof of Service of the second Notice showing that the landlord served the Notice to the tenants at 12:00 pm on February 13, 2015 by way of leaving the Notice with an adult who apparently resides with the tenants. The Proof of Service establishes that the service was witnessed by "CS" and a signature for CS is included on the form.

The Notices restate section 46(4) of the Act which provide that the tenants 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 tenants did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenants 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 tenants 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. Section 88 of the *Act* provides the approved methods by which documents can be served. Section 88 reads, in part, as follows:

**How to give or serve documents generally**

**88** All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this *Act* to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person...;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];

On the Proof of Service of the second Notice, the landlord has indicated that the second Notice was served by leaving the second Notice with an adult male who answered the door. The tenancy agreement included with this application does not indicate whether any other tenants or occupants reside with the tenants. The Proof of Service form provided by the landlord does not include any additional information, such as the name or age of the adult male, to establish whether the individual with whom the second Notice was left is an adult who apparently resides with the tenant, and furthermore, there is no information provided in any of the evidentiary material submitted by the landlord that speaks to the issue of whether the person with whom the second Notice was left is an adult who apparently resides with the tenant.

I find that, by serving the second Notice by way of leaving it with an unidentified individual without proof that this individual is an adult who apparently resides with the tenant, the landlord has not served the Notice in a manner consistent with the service provisions for documents as provided under section 88 of the *Act*. I further find that there is no evidence before me that establishes that the landlord was given leave to serve the second Notice in an alternative fashion as ordered by a delegate of the director of the Residential Tenancy Branch in accordance with section 88(i) of the *Act*. I therefore find that as the landlord has not demonstrated that the second Notice was properly served in accordance with the *Act*, it is set aside and of no effect.

I turn now to the first Notice, which the landlord establishes was served to the tenants on January 2, 2015. It is tenable that since the second Notice was set aside, it is open for the landlord to pursue an Order of Possession and a monetary Order pursuant to the provisions of the first Notice which remain in effect. However, I find that there are deficiencies with the first Notice that would effectively render it of no effect. The first Notice does not list the names of the tenants as they appear on the application or on the tenancy agreement. The full names of both the male and female tenant, as they appear on the first Notice, are not consistent with the manner in which the names correctly appear on the tenancy agreement and application for dispute resolution. Therefore, I set aside the first Notice and determine that it is of no effect.

As the landlord's application for an Order of Possession arises from Notices that have been set aside, I dismiss the landlord's application for an Order of Possession based on the Notices before me without leave to reapply. The landlord may wish to serve a new Notice to the tenant(s) if the landlord so wishes.

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

#### Conclusion

I dismiss the landlord's application for an Order of Possession without leave to reapply.  
I dismiss the landlord's application for a monetary Order 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 16, 2015

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Residential Tenancy Branch

