



# 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 landlords submitted two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on March 17, 2015, the landlord “JA” 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 five days after service.

Based on the written submissions of the landlords, 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 22, 2015, the fifth 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:

- Two copies of the Proof of Service of the Notice of Direct Request Proceedings forms served to the tenants;

- A copy of a residential tenancy agreement which was signed by the landlord “JA” and the tenants on February 1, 2015, indicating a monthly rent of \$750.00 due on the first day of the month for a tenancy commencing on February 1, 2015;
- A Monetary Order Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlords establish a monetary claim in the amount of \$375.00 for outstanding rent owing for March 2015;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated March 2, 2015, which the landlords state was served to the tenants on March 2, 2015, for \$375.00 in unpaid rent due on March 1, 2015, with a stated effective vacancy date of March 12, 2015; and
- A copy of the Proof of Service of the Notice showing that the landlord JA served the Notice to the tenants by way of leaving the Notice with an individual, identified as “BC”. The landlord JA states that BC is the son of the tenant “MS”. The service was confirmed as BC acknowledged receipt of the Notice by signing the Proof of Service form.

The Notice restates section 46(4) of the *Act* which provides 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 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. 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 first page of the Proof of Service of the Notice form, the landlord has checked a box indicating that the Notice was served to the tenants by leaving it with an adult who apparently resides with the tenant. If service of the Notice is carried out in this manner, the landlord is required to provide details that support the landlord's claim that the individual to whom the Notice was served is an adult who does indeed reside with the tenants. I find that the information provided by the landlords does not adequately demonstrate that this requirement has been fulfilled and does not provide sufficient details to clearly establish that service of the Notice was carried out in a manner consistent with section 88 of the *Act*.

The tenancy agreement included with this application does not indicate whether any other tenants or occupants reside with the tenants and does not contain any information to identify whether the individual identified as "BC" is an adult who resides with the tenants. The Proof of Service form provided by the landlords does not include any additional information to establish that "BC" is in fact an adult who apparently resides with the tenant, and furthermore, there is no information provided in any of the evidentiary material submitted by the landlords that speaks to the issue of whether "BC" is an adult who apparently resides with the tenants.

The information provided by the landlords conveys only that the individual identified as BC is the son of the tenant MS and does not include any additional evidentiary details, such as the age or name of this individual that would assist in clearly establishing whether service of the Notice to this person was in accordance with section 88(e) of the *Act*, which would require that the individual is in fact an adult who apparently resides with the tenants.

On the second page of the Proof of Service Notice to End Tenancy, there is no signature of the person serving the Notice to confirm delivery of the Notice. The person

serving the Notice, JA, is to provide his name and signature to attest that he has served the Notice in the manner which he has claimed. The Proof of Service form indicates that the Notice was served by the landlord JA, however, neither the name nor signature of JA is provided under the section of the form where the person serving the Notice is to confirm service by printing their name and providing their signature. Rather, the form includes the name and signature of BC, the person to whom the Notice was served, which, in effect, asserts that BC served the Notice to BC.

I find that, by serving the Notice to an individual that has not been clearly proven to be 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 landlords were given leave to serve the Notice in an alternate 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 Notice was not properly served in accordance with the *Act*, it is set aside and of no effect.

As the landlords' application for an Order of Possession arises from a Notice that has been set aside, I dismiss the landlords' application for an Order of Possession without leave to reapply. The landlords may wish to serve a new Notice to the tenants if the landlords so wish.

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

### Conclusion

I dismiss the landlords' application for an Order of Possession without leave to reapply. I dismiss the landlords' 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 24, 2015

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Residential Tenancy Branch

