



# 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.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on April 10, 2015, the landlord personally served Tenant M.L. the Notice of Direct Request Proceeding. The landlord had Tenant M.L. sign the Proof of Service of the Notice of Direct Request Proceeding to confirm personal service. Based on the written submission of the landlord and in accordance with section 89, I find that the tenant has been duly served with the Direct Request Proceeding documents on April 10, 2015, the day it was personally served to them.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on April 13, 2015, the landlord posted the Notice of Direct Request Proceeding to the door of an address, which is not the rental unit, for Tenant A.N.

### 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:

- Copies of 10 pages with screenshots of texts between the landlord and the tenant;

- 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 landlords and Tenant M.L. on October 01, 2014, and Tenant A.N. on September 31, 2014, indicating a monthly rent of \$1,200.00 for a tenancy commencing on October 01, 2014;
- 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) dated April 02, 2015 and personally handed to Tenant M.L. on April 01, 2015, with a stated effective vacancy date of April 11, 2015, for \$1,200.00 in unpaid rent and \$100.00 in unpaid utilities.

The 10 Day 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.

#### Analysis

I have reviewed all documentation and I find that the landlord has not proven service of the Notice of Direct Request Proceeding documents to Tenant A.N., in accordance with Section 89 of the *Act*, as the landlord did not have a witness sign the Proof of Service of the Notice of Direct Request Proceeding and did not provide any documentation to establish service to Tenant A.N. at an address other than the rental unit.

Therefore I dismiss the landlord's application naming Tenant A.N. with leave to reapply.

I will now consider the landlord's application naming Tenant M.L.

In this type of matter, the landlord must prove that they served the tenant with the 10 Day Notice as per Sections 71(2)(a) and 88 of the *Act*.

#### **Director's orders: delivery and service of documents**

**71** (1) The director may order that a notice, order, process or other document may be served by substituted service in accordance with the order.

(2) In addition to the authority under subsection (1), the director may make any of the following orders:

**(a) that a document must be served in a manner the director considers necessary**, despite sections 88 *[how to give or serve documents generally]* and 89 *[special rules for certain documents]*;

Residential Tenancy Policy Guideline # 39 contains the details about the key elements that need to be considered when making an application for Direct Request.

## **PROOF OF SERVICE**

### **10-Day Notice to End Tenancy**

The landlord must prove the tenant was served with the 10-Day Notice to End Tenancy.

The service requirements for direct request materials are narrow to reflect the fact that the tenant does not have an opportunity to present evidence on the issues, unless they previously filed their own application for dispute resolution, seeking cancellation of the Notice to End Tenancy.

A landlord must serve the tenant with a 10-Day Notice to End Tenancy by:

registered mail;

**in person, with a witness verifying it was served;** or

by posting it on the tenant's door or in an equally conspicuous place, with a witness verifying it was served.

**Proof of service of the 10 Day Notice to End Tenancy may take the form of:**

**registered mail receipt and printed tracking report;**

**a receipt signed by the tenant, stating they took hand delivery of the document(s); or**

**a witness statement that they saw the landlord deliver the document(s).**

On the second page of the Proof of Service Notice to End Tenancy, there is no signature of a witness to confirm service of the 10 Day notice to the tenant, which is a requirement of the Direct Request process. If this was the only issue with the 10 Day Notice, I could consider sending this application to a participatory hearing

Section 46 (1) of the *Act* outlines the grounds on which to issue a notice to end tenancy for non-payment of rent:

### **Landlord's notice: non-payment of rent**

**46** (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, 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.

I find that the landlord has served the 10 Day Notice on the same day that the rent is due, which is not in accordance Section 46 of the *Act*, thereby invalidating the 10 Day Notice

Therefore, I dismiss the landlord's application to end this tenancy and obtain an Order of Possession on the basis of the 10 Day Notice of April 02, 2015, without leave to reapply. The 10 Day Notice of April 02, 2015 is cancelled and of no force or effect.

For the same reasons identified in the 10 Day Notice, I dismiss the landlord's application for a monetary Order with leave to reapply.

### **Conclusion**

The landlord's application for an Order of Possession on the basis of the 10 Day Notice of April 02, 2015 is dismissed, without leave to reapply. The 10 Day Notice of April 02, 2015 is cancelled and of no force or effect.

This tenancy continues until it is ended in accordance with the *Act*.

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: April 15, 2015

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Residential Tenancy Branch

