



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

The landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on April 21, at 1:50 pm, the landlord’s agent “JA” served the tenant with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The Proof of Service form establishes that the service was witnessed by “PY” and a signature for PY is included on the form.

Based on the written submissions of the landlords, and in accordance with section 89 of the *Act*, I find that the tenant has been duly served with the Direct Request Proceeding documents on April 21, 2015.

### 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:

- 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’ agent and the tenant on January 22, 2015, indicating a monthly rent of \$1,010.00 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 \$1,010.00 for unpaid rent owed for April 2015;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated April 10, 2015, which the landlords state was served to the tenant on April 10, 2015 for \$1,035.00 in unpaid rent due on April 1, 2015;
- A copy of the Proof of Service of the Notice showing that the landlord's agent "JA" served the Notice to the tenant by way of personal service via hand-delivery at 3:00 pm on April 10, 2015. The Proof of Service form establishes that the service was witnessed by "PY" and a signature for PY is included on the form

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 landlords 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.

Section 52 of the *Act* provides the following requirements regarding the form and content of notices to end tenancy:

**52** In order to be effective, a notice to end a 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,...and
- (e) when given by a landlord, be in the approved form...

I have reviewed all documentary evidence and find that the Notice, dated April 10, 2015, served to the tenant does not adhere to the provisions of section 52 of the *Act*. The Notice does not include the effective date of the Notice, therefore making the Notice incomplete.

In a participatory hearing it may be possible to amend certain deficiencies with respect to the Notice or to seek clarification from the parties, however, in the limited scope of the Direct Request process, the *Act* does not allow an adjudicator to input an effective date of the notice where none is provided on the Notice. Therefore, I find that the Notice is not in compliance with the provisions of section 52 of the *Act* and is set aside and is of no force and effect.

As the landlords' application for an Order of Possession arises from a Notice that has been set aside, I dismiss the landlord's application for an Order of Possession, based on the April 10, 2015 Notice, without leave to reapply. The landlord may wish to serve a new Notice to the tenant if the landlord so wishes.

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, based on the April 10, 2015 Notice, 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: April 23, 2015

---

Residential Tenancy Branch

