



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 487559 BC LTD  
and [tenant name suppressed to protect privacy]

## **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 28, 2015, at 7:45 pm, the landlord's agent "JS" served each of the above-named tenants with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The personal service was confirmed as the Proof of Service forms establish that the service was witnessed by "KC" and a signature for KC is included on each of the forms.

Based on the written submissions of the landlord, and in accordance with section 89 of the *Act*, I find that the tenants have been duly served with the Direct Request Proceeding documents on March 28, 2015.

### 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's agent and the tenants on November 6, 2013, indicating a monthly rent of \$900.00 due on the first day of the month for a tenancy commencing on November 1, 2013;
- 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 \$5,000.00 for outstanding rent owing for the period of May 1, 2014 to March 1, 2015;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated February 25, 2015, which the landlord states was served to the tenants on February 20, 2015, for \$6,750.00 in unpaid rent due on February 1, 2015, with a stated effective vacancy date of March 10, 2015; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent JS served the Notice to the tenants by way of personal service via hand-delivery to the tenant "RH" at 3:00 pm on February 20, 2015. The Proof of Service form establishes that the service was witnessed by "BF" and a signature for BF is included on the 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.

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 find that the Notice, dated February 28, 2015, served to the tenants does not adhere to the provisions of section 52 of the *Act*. The Notice does not include the correct address of rental unit, as established in the tenancy agreement and on the Application for Dispute Resolution by Direct Request. I further find that the Notice is not signed by the landlord or an agent of the landlord, as required under section 52 of the *Act*.

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 assume that the Notice was endorsed by the landlord when no signature for the landlord is provided on the Notice. Therefore, I find that the Notice is not in compliance with the provisions of section 52 of the *Act*.

I find that the landlord's application contained another deficiency with respect to service of the Notice. The Notice is dated February 28, 2015, however, on the Proof of Service of the Notice form, the landlord's agent has indicated that the Notice was served on February 20, 2015, a date earlier than the date of the Notice. The landlord has not provided any evidentiary material that speaks to the discrepancy between the two dates, and, as a result, I am unable to make inferences within the limited scope of the Direct Request process to find that the tenants have been served with the Notice as attested by the landlord's agent.

As the landlords' application for an Order of Possession arises from a Notice that has been set aside, and based on the foregoing deficiencies identified in the landlord's application, I dismiss the landlord's application for an Order of Possession, based on the February 28, 2015 Notice, without leave to reapply. The landlord may wish to serve a new Notice to the tenants 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: April 13, 2015

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Residential Tenancy Branch