



# 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 two signed Proofs of Service of the Notice of Direct Request Proceeding which declares that on May 13, 2015, the landlord sent the tenants the Notices of Direct Request Proceeding by registered mail to the rental unit. The landlord provided one copy of a Canada Post Customer Receipt containing a Tracking Number to confirm this 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 Proceedings served to the tenants;
- A copy of a residential tenancy agreement which was signed by the landlord and the tenants on September 18, 2014, indicating a monthly rent of \$1,055.00, due on the first day of the month for a tenancy commencing on October 01, 2014;

- A Monetary Order Worksheet showing the rent owing and paid during this tenancy. The Monetary Order Worksheet noted that \$300.00 of the \$1,710.00 identified as owing in the 10 Day Notice was paid on May 06, 2015; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated May 02, 2015, and posted to the tenants' door on May 02, 2015, with a stated effective vacancy date of May 15, 2015, for \$1,710.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was posted to the tenants' door at 10:00 (a.m. or p.m. not indicated) on May 02, 2015. The 10 Day Notice states that the tenants 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

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 of 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. The onus is on the landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and that such evidentiary material 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.

In this type of matter, the landlord must prove that they served each tenant with the Notice of Direct Request proceeding, with all the required inclusions, as indicated on the Notice as per Section 89 of the *Act*.

I find that the landlord has only provided one registered mail receipt for both of the Proof of Service of the Notice of Direct Request Proceedings and has not indicated, on the registered mail receipt that was submitted, which tenant that the Notice of Direct Request Proceeding was served to. By not indicating on the registered mail receipt the tenant that was served with the Notice of Direct Request Proceeding, I find that I am not able to determine which of the tenants was served with the Notice and, accordingly, I cannot confirm service of the Notice to either of the tenants.

Therefore, the landlord's application for an Order of Possession based on unpaid rent and a monetary Order is dismissed with leave to reapply.

Conclusion

I dismiss the landlord's application 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: May 19, 2015

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Residential Tenancy Branch

