



# Dispute Resolution Services

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 May 12, 2015, the landlord 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 “MS” and a signature for MS is included on the form.

Based on the written submissions of the landlord, 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 May 12, 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:

- 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 landlord and the tenant on February 18, 2011, indicating a monthly rent of \$795.00 due on the first day of the month for a tenancy commencing on February 28, 2011;

- 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 \$812.00 for outstanding rent owing for May 2015;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated May 5, 2015, which the landlord states was served to the tenant on May 5, 2015, for \$812.00 in unpaid rent due on May 1, 2015, with a stated effective vacancy date of May 15, 2015; and
- A copy of the Proof of Service of the Notice showing that the landlord attests that the Notice was served on May 5, 2015 at 6:30 pm by way of personal service via hand-delivery to an adult neighbour who, according to the landlord, was babysitting the tenant's children. The Proof of Service establishes that the service was witnessed by "RW" and a signature for RW 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 landlord 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.

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:

**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;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mail box or mail slot for the address
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (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 hand delivered to the person (the tenant). However, the landlord also states, under the “special details” section, that the Notice was served to an adult babysitter who was babysitting the tenant’s children. The statement provided by the landlord demonstrates that the Notice was not provided by hand directly to the tenant, rather, that it was left with an individual other than the tenant. On the second page of the Proof of Service of the Notice form, the landlord provides that the Notice was to be posted to the door, however, it was eventually left with an adult neighbor who was babysitting for the tenant. The landlord’s statement with respect to the manner in which the Notice was served demonstrates that the Notice was not served in accordance with the provisions of the Act.

The landlord left the Notice at the rental unit with an adult other than the tenant. The manner in which the Notice was served, by leaving it with an adult other than the tenant, may have been in accordance with section 88(e) of the *Act* which permits for the Notice to be left at the tenant’s residence 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 given is an adult who *resides* with the tenant. I find that the information provided by the landlord 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 tenant and does not contain any evidence or information to identify whether the individual identified as the babysitter is an adult, and furthermore, whether the babysitter is an adult who resides with the tenant. The Proof of Service form provided by the landlord does not include any additional information to establish that the babysitter 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 landlord that speaks to the issue of whether the babysitter is an adult who apparently resides with the tenant.

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 landlord was 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*. Based on the foregoing, I find that the landlord has not demonstrated that the Notice was properly served in accordance with the *Act*, and therefore, the Notice is set aside and is of no force and effect.

As the landlord's 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 May 5, 2015 Notice, without leave to reapply. The landlord may wish to serve a new Notice to the tenant if the landlord so wishes.

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: May 13, 2015

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Residential Tenancy Branch