



# 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 Proof of Service of the Notice of Direct Request Proceeding forms which declare that on May 30, 2015, the landlord’s agent “DL” served the above-named tenants with the Notice of Direct Request Proceeding via registered mail. The landlord provided two copies of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received 5 days after service.

Based on the written submissions of the landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the tenants have been deemed served with the Direct Request Proceeding documents on June 4, 2015, the fifth day after their registered 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 Proceeding served to the tenants;

- A copy of a residential tenancy agreement which was signed by the landlord's agent on July 12, 2007, indicating a monthly rent of \$825.00 due on the first day of the month for a tenancy commencing on July 15, 2007;
- A Monetary Order Worksheet showing the rent owing and paid during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$4,619.87 for outstanding rent, comprised of the balance of unpaid rent owing for the period of January 2015 to May 2015;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated May 6, 2015, which the landlord states was served to the tenants on May 6, 2015, for \$4,619.87 in unpaid rent due on May 1, 2015, with a stated effective vacancy date of May 16, 2015; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent "DL" served the Notice to the tenants on May 6, 2015, at 2:00 PM, by way of leaving the Notice with an individual, identified only by a first name beginning with "W", who the landlord contends is an adult who apparently resides with the tenants. The Proof of Service establishes that the service was witnessed by "JL" and a signature for JL 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.

Although the tenant "RB" is named as a respondent on the application, the tenant RB is not listed on the tenancy agreement and a signature for RB does not appear on the tenancy agreement. Therefore, I will consider the landlord's application against the tenant "TC" only.

"Policy Guideline #39. Direct Requests" provides the guidelines which govern the Direct Request process. The guideline provides that the onus is on the landlord to ensure that they have included all required documents necessary for an application for dispute resolution via the Direct Request process. Policy Guideline #39 establishes that the landlord must provide, when making an application for dispute resolution, a copy of the tenancy agreement. Section 13 of the *Act* provides, in part, the following with respect to the requirements for tenancy agreements:

(2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

(b) the correct legal names of the landlord and tenant;

Section 12 of the *Residential Tenancy Regulation* provides, in part, the following with respect to the requirements for tenancy agreements:

**12 (1)** A landlord must ensure that a tenancy agreement is

(b) signed and dated by both the landlord and the tenant,

Within the Direct Request process, the tenancy agreement is considered to be a vital document which establishes the parties to the tenancy agreement, the correct address of the rental unit, and the details agreed upon by the parties to the agreement, such as the day in the month on which the rent is due. The manner in which the copy of the tenancy agreement provided by the landlord is drafted demonstrates that it does not clearly establish whether the tenant TC endorsed the agreement by signing the last page of the tenancy agreement. The first page of the tenancy lists a tenant by the name of "DC". The first name beginning with "D" is crossed out and replaced below with a first name beginning with "T", to therefore match the name of the tenant TC. However, on the last page of the tenancy agreement, in the field where the tenant is to sign the agreement, neither a name nor signature for TC is provided. Instead, the tenant is listed as being DC and a signature for DC is provided. Therefore, the tenancy agreement provided by the landlord does not demonstrate that the tenant TC endorsed the tenancy agreement and the terms contained within it by signing the tenancy agreement. By extension then, I am unable to issue an order against tenant TC, as the tenancy agreement provided by the landlord does not establish that TC endorsed the tenancy agreement and the terms contained within it by providing his signature.

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;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (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 at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (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;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];

The landlord stated that the Notice was served to the tenant by leaving it with an adult, identified only by a first name beginning with "W", 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 adult to whom the Notice was given does indeed reside 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, specifically an individual identified as bearing the same name as “W”, reside with the tenant(s) and does not contain any information to identify whether the individual identified as “W” 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 “W” is in fact an adult who apparently resides with the tenants, and furthermore, there is no information provided in any of the evidentiary material submitted by the landlord that speaks to the issue of whether “W” is an adult who apparently resides with the tenants.

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 6, 2015 Notice, without leave to reapply. The landlord may wish to serve a new Notice to the tenants 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: June 04, 2015

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Residential Tenancy Branch

