



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CHARTWELL CONSTRUCTION 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 a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on July 12, 2015, the landlord sent both tenants the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this one 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:

- A copy of one Proof of Service of the Notice of Direct Request Proceeding served to both tenants;
- A copy of a residential tenancy agreement which was signed by the landlord and tenant C.M. December 9, 2014, and signed by tenant D.H. on December 10, 2014 indicating a monthly rent of \$1,337.00, due on the last day of the month for a tenancy commencing on January 1, 2015;
- A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated July 1, 2015, and posted to the tenants’ door on July 1, 2015, with a stated effective vacancy date of June 11, 2015, for \$1,337.00 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 pm on July 2, 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

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 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 and Proof of Service for both of the Notices of Direct Request Proceedings and has indicated that the Notice of Direct Request Proceeding was served to both tenants. 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: July 14, 2015

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Residential Tenancy Branch

