



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding KAJODY PROPERTY MANAGEMENT INC  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR

### 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.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on July 15, 2015, the landlord posted the Notice of Direct Request Proceeding to the tenant’s door. The landlord has included additional information on the Proof of Service that declares the Notice of Direct Request Proceeding was served “through the door.” The landlord had a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm this service.

### 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*?

### 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 April 30, 2015, indicating a monthly rent of \$600.00 due on the 1st day of the month for a tenancy commencing on May 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 6, 2015, and personally served to the tenant on July 6, 2015, with a stated effective vacancy date of July 16, 2015, for \$1,000.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was personally handed to the tenant at 2:00 pm on July 6, 2015. The Notice states that the tenant 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.

I have reviewed all documentary evidence and find that the tenant's name on the tenancy agreement does not match the tenant's name on the 10 Day Notice or any of the other documents that have been submitted with the Application for Dispute Resolution. I have to be satisfied with the documentation presented that I am issuing the decision and orders in the correct name. The discrepancy in the tenant's name raises a question that may only be answered by addressing the issue through a participatory hearing.

In this type of matter, the landlord must prove they served the tenant the Notice of Direct Request proceeding with all the required inclusions as indicated on the Notice as per subsections 89 (1) and (2) of the *Act* which permit service by;

- Leaving a copy with the person;
- By sending a copy by registered mail to the address at which the person resides;

- By leaving a copy with an adult who apparently resides with the tenant; and
- By attaching a copy to the door or other conspicuous place at the address at which the tenant resides.

I also note that the landlord's Proof of Service of the Notice of Direct Request Proceeding indicates that the documents were served by posting to the door and also indicates they were served through the door.

Placing the Notice of Direct Request Proceeding in the mailbox of the rental unit or sliding it under the door are not methods of service that are in accordance with section 89 of the *Act*.

Since the Proof of Service of the Notice of Direct Request Proceeding lends ambiguity to the method of service used, I am unable to determine if the landlord has served the tenant with notice of this application in accordance with section 89 of the *Act*. The landlord's application for an Order of Possession based on unpaid rent 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 16, 2015

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Residential Tenancy Branch

