



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MOBERLY INVESTMENTS 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 31, 2015, the landlord personally served the tenant the Notice of Direct Request Proceeding by handing it to R.L., the landlord who served the Notice of Direct Request Proceeding. The landlord had a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm personal 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*?

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 April 16, 2011, indicating a monthly rent of \$1,600.00, due on the first day of the month for a tenancy commencing on May 1, 2011;
- A copy of two Notices of Rent Increase forms showing the rent being increased from \$1,600.00 to the current monthly rent amount of \$1,685.00;
- 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 2, 2015, and posted to the tenant's door on July 2, 2015, with a stated effective vacancy date of July 15, 2015, for \$1,685.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was posted to the tenant's door at 9:05 (a.m. or p.m. not indicated) on July 2, 2015. The 10 Day 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

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on July 5, 2015, three days after its posting.

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*.

The Proof of Service for the Notice of Direct Request Proceeding indicates that the landlord personally served the tenant by handing the Notice of Direct Request Proceeding to himself.

I find that this discrepancy in the service of the Notice of Direct Request provides sufficient ambiguity that I am not able to confirm service of the Notice of Direct Request Proceeding to the tenant.

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: August 04, 2015

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Residential Tenancy Branch

