



# 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 a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on August 11, 2015, at 8:30 PM, the landlord served the Respondent "MT" with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The personal service was confirmed as the Respondent "MT" acknowledged receipt of the Notice of Direct Request Proceeding by signing the Proof of Service form. The Proof of Service form also establishes that the service was witnessed by "AD" and a signature for "AD" 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 Respondent "MT" has been duly served with the Direct Request Proceeding documents on August 11, 2015.

Although a second individual, identified as "DW", is named as a respondent on the application form and is listed on the tenancy agreement, a signature for "DW" does not appear on the tenancy agreement to establish that "DW" endorsed the terms of the agreement. Therefore, I will consider the landlord's application against the Respondent "MT" only.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent and utilities 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 Respondent "MT";

- A copy of a residential tenancy agreement which was signed by the landlord and a tenant identified as “MT” on January 8, 2015, indicating a monthly rent of \$1,100.00 due on the first day of the month for a tenancy commencing on January 16, 2015;
- A Monetary Order Worksheet showing the rent and utilities owing during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$1,226.91, comprised of outstanding rent owing for August 2015 in the amount of \$1,100.00 and unpaid utilities owed in the amount of \$126.91;
- A copy of an email, dated July 16, 2015, addressed to the tenant, in which the landlord requests that the tenants provide payment for the portion of the utilities owed by the tenant;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent and utilities (the Notice) dated August 3, 2015, which the landlord states was served to the tenants on August 3, 2015, for \$1,100.00 in unpaid rent due on August 1, 2015, and unpaid utilities in the amount of \$126.91 due on July 16, 2015, with a stated effective vacancy date of August 13, 2015;
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenants by way of personal service via hand-delivery to the tenant “MT” at 10:05 AM on August 3, 2015. The personal service was confirmed as the tenant “MT” acknowledged receipt of the Notice by signing the Proof of Service form. The Proof of Service form establishes that the service was witnessed by “AD” and a signature for “AD” 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.

I find that the evidentiary material provided by the landlord brings into question whether the Respondent "MT" has been correctly identified on the Application for Dispute Resolution by Direct Request form to be the same individual as the tenant "MT" listed on the tenancy agreement. The tenants listed on the tenancy agreement, and other supporting documents with the application, are identified as "MT" and "DW". The manner in which the complete name for the respondent "MT" is spelled on the Application for Dispute Resolution by Direct Request form is different than the manner in which the complete name for the tenant "MT" is spelled on the tenancy agreement and on the Notice to end tenancy.

Based on this deficiency, I find that the landlord has not definitively demonstrated that the respondent listed on the application form, "MT", is the same person as the tenant "MT" as listed on the tenancy agreement. This inconsistency cannot be clarified within the limited scope of the Direct Request Process.

Subsection 46(6) of the *Act*, reads in part as follows:

If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

The tenancy agreement included as part of this application includes a term which establishes that the tenants are responsible for a portion of the hydro and gas bills. The landlord provided a copy of a written notice dated July 16, 2015, in which the tenants are alerted to the sum of the unpaid utilities owed and are advised that they are responsible for the payment of the sum of the unpaid utilities. If a tenant is provided a written demand to provide payment of a utility charge for which the tenant is responsible, the landlord may treat the unpaid utility charges as unpaid rent only if the utility charges remain unpaid more than 30 days after the written demand. As the landlord issued a Notice for unpaid utilities on July 16, 2015, I find that the landlord has not waited more than 30 days from the date of the written demand to the tenants, and has, therefore, issued the Notice for unpaid utilities to the tenants on a date earlier than permitted under the *Act*.

I further find that the tenancy agreement does not clearly establish a defined portion of the utilities for which the tenants are expected to provide payment.

As previously indicated, 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. I find that there are deficiencies with this application that cannot be clarified by way of the Direct Request Proceeding, as the application before me does not establish that the respondent "MT" has been correctly identified to be the same person as the tenant "MT" as identified on the tenancy agreement. These deficiencies cannot be remedied by inferences in the absence of more evidentiary material, or oral testimony, which clarifies the questions raised by these inconsistencies. Therefore, I dismiss the landlord's application for an Order of Possession and a monetary Order with leave to reapply.

It remains open to the landlord to reapply for dispute resolution via the Direct Request process if all requirements for an application for dispute resolution via Direct Request, as outlined in Policy Guideline #39, can be met, or, in the alternative, the landlord may wish to submit an application for dispute resolution to be heard via a participatory hearing. Given the nature of the deficiency identified with respect to the undefined portion of the utilities to be paid by the tenants, as established in the tenancy agreement, the landlord may wish to submit an application for dispute resolution to be heard via a participatory hearing.

### 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 13, 2015

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Residential Tenancy Branch

