



# 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 Proofs of Service of the Notices of Direct Request Proceeding which declare that on October 9, 2015, the landlord personally served the tenants the Notices of Direct Request Proceeding. The landlord provided signed and witnessed documentary evidence to confirm personal service. Based on the written submissions of the landlord and in accordance with section 89 of the *Act*, I find that the tenants have been duly served with the Direct Request Proceeding documents on October 9, 2015.

### 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 Proofs of Service of the Notices of Direct Request Proceeding served to the tenants;

- A copy of a residential tenancy agreement which was signed by the landlord on March 29, 2015 and the tenants on March 27, 2015, indicating a monthly rent of \$2,000.00, due on the first day of the month for a tenancy commencing on May 1, 2014;
- 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 October 2, 2015, and personally served to the tenants on October 2, 2015, with a stated effective vacancy date of October 11, 2015, for \$2,000.00 in unpaid rent and \$150.46 in unpaid utilities.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was personally served to the tenants at 5:30 pm on October 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.

Section 52 of the Act provides the following with respect to a notice to end tenancy:

**52** In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

The 10 Day Notice includes an incorrect address for the rental unit, which effectively gives notice to the tenant to move out of an address that is not the correct address of the rental unit as established in the tenancy agreement. I find this sufficiently invalidates the 10 Day Notice. Therefore, I find the 10 Day Notice is not in accordance with section 52 of the *Act*.

As a result of the above-noted deficiency, I dismiss the landlord's application for an Order of Possession without leave to reapply. It remains open to the landlord to issue a new 10 Day Notice if the landlord so wishes.

Given the error in the landlord's 10 Day Notice, I also dismiss the landlord's application for a Monetary Order for unpaid rent with leave to reapply.

### Conclusion

I dismiss the landlord's application for an Order of Possession based on the 10 Day Notice of October 2, 2015 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: October 15, 2015

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Residential Tenancy Branch

