



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **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 two signed Proofs of Service of the Notices of Direct Request Proceeding which declare that on January 12, 2016, the landlord sent the tenants the Notices 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 Numbers to confirm this 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*?

### 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 and the tenants on October 31, 2015, indicating a monthly rent of \$2,350.00, due on the first day of the month for a tenancy commencing on November 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 January 2, 2016, with a stated effective vacancy date of January 12, 2016, for \$2,350.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was personally served to the tenant's adult son at 11:20 am on January 2, 2016. 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

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 the tenants with the 10 Day Notice in a manner that is considered necessary as per Sections 71(2) (a) and 88 of the *Act*. Residential Tenancy Policy Guideline # 39 contains the details about the key elements that need to be considered when making an application for Direct Request.

### **PROOF OF SERVICE**

#### **10-Day Notice to End Tenancy**

The landlord must prove the tenant was served with the 10-Day Notice to End Tenancy.

A landlord must serve the tenant with a 10-Day Notice to End Tenancy by:

registered mail;

**in person, with a witness verifying it was served;** or

by posting it on the tenant's door or in an equally conspicuous place, with a witness verifying it was served.

**Proof of service of the 10 Day Notice to End Tenancy may take the form of:**

**registered mail receipt and printed tracking report;**

**a receipt signed by the tenant, stating they took hand delivery of the document(s);**

**or**

**a witness statement that they saw the landlord deliver the document(s).**

On the second page of the Proof of Service Notice to End Tenancy, there is a witness signature, but no signature of the person serving the 10 Day notice to confirm delivery of the 10 Day Notice.

I find that I am not able to confirm service of the 10 Day Notice to the tenant, which is a requirement of the Direct Request process. Had this been the only discrepancy, I could have ordered that the direct request proceeding be reconvened to a participatory hearing.

However, I also note that in this type of matter, the landlord must prove they served the tenant with 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 sending a copy by registered mail to the address at which the person resides...” The definition of registered mail is set out in section 1 of the *Act* as “any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available.”

I find that the tracking numbers provided by the landlord on the Proofs of Service of the Notices of Direct Request Proceeding are for packages sent by Canada Post’s Xpress Post mailing, which may or may not require a signature from the individuals to confirm delivery of the document to the persons named as the respondents. In this case, Canada Post’s Online Tracking System shows that signatures were not required for the delivery of these Xpress Post mailings and, as such, they do not meet the definition of registered mail as defined under the *Act*. Since I find that the landlord has not served the tenants with notices of this application in accordance with Section 89 of the *Act*, I dismiss the landlord’s application for an Order of Possession based on unpaid rent and a Monetary Order with leave to reapply.

### Conclusion

The landlord’s application is dismissed 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: January 18, 2016

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Residential Tenancy Branch

