



# 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 February 16, 2016, the landlord served the tenant with the Notice of Direct Request Proceeding by way of posting it to the door of the rental unit at 6:00 PM. The Proof of Service form establishes that the service was witnessed by “MM” and a signature for “MM” is included on the form.

Based on the written submissions of the landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the Direct Request Proceeding documents on February 19, 2016, three days after their posting.

### 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 July 21, 2015, indicating a monthly rent of \$1,225.00 due on the first day of the month for a tenancy commencing on July 24, 2015;

- A Monetary Order Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$1,246.00 for unpaid rent owing for February 2016;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated February 03, 2016, which the landlord states was served to the tenant on February 03, 2016, for \$1,246.00 in unpaid rent due on February 01, 2016, with a stated effective vacancy date of February 16, 2016; and
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenant by way of posting it to the door of the rental unit at 9:30 AM on February 03, 2016. The Proof of Service form establishes that the service was witnessed by “MM” and a signature for “MM” is included on the form.

The Notice restates section 46(4) of the *Act* which provides that the tenant 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 tenant did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenant 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 have reviewed all documentary evidence provided by the landlord. 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 Notice issued to the tenant, under the section where the tenant is given a 10-day notice to vacate the rental unit, provides an incorrect address for the rental unit, which effectively gives notice to the tenant to move out of a unit bearing an address that is not the correct address of the rental unit as established in the tenancy agreement and on the application for dispute resolution. I find this sufficiently invalidates the Notice. Therefore, I find the Notice is not in accordance with section 52 of the *Act*, and therefore, the Notice is set aside and is of no force and effect.

As the landlord's application for an Order of Possession arises from a Notice that has been set aside, I dismiss the landlord's application for an Order of Possession, based on the February 03, 2016 Notice, without leave to reapply. The landlord may wish to serve a new Notice to the tenant if the landlord so chooses.

Based on the foregoing, I dismiss the landlord's application for a monetary Order with leave to reapply.

### Conclusion

I dismiss the landlord's application for an Order of Possession, based on the February 03, 2016 Notice, 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: February 22, 2016

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Residential Tenancy Branch

