



# 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 January 25, 2016, the landlord posted the Notice of Direct Request Proceeding to the door of the rental unit.

### 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 tenants;
- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on October 30, 2015, indicating a monthly rent of \$485.00, due on the first day of the month for a tenancy commencing on November 01, 2015;
- A Monetary Order Worksheet showing the rent owing and paid during this tenancy; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated December 14, 2015, and posted to the tenant's door on December 14, 2015, with a stated effective vacancy date of December 22, 2015, for \$323.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was posted to the tenant's door at 4:45 p.m. on December 14, 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 December 17, 2015, three days after its posting.

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 of 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 with all the required inclusions as indicated on the Notice as section 89 of the *Act*.

On the Proof of Service Notice of Direct Request Proceeding, I find that there is no signature of a witness who can confirm the landlord posted the Notice of Direct Request Proceeding to the door of the rental unit and is able to confirm service of the documents to the tenant.

Therefore, since I find that the landlord has not proven service of the Notice of Direct Request Proceeding, the landlord's application for an Order of Possession based on unpaid rent and a monetary Order is dismissed, with leave to reapply.

I note that Section 89(1) of the *Act* does not allow for the Notice of Direct Request Proceeding to be posted to the door of the rental unit. Section 89(2) of the *Act* does allow for the Notice of Direct Request Proceeding to be posted to the door of the rental unit but only when considering an Order of Possession for the landlord.

If I was able to prove service of the Notice of Direct Request Proceeding to the door of the rental unit, I would only be able to consider the portion of the application regarding the landlord's request for an Order of Possession.

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: February 05, 2016

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Residential Tenancy Branch

