



# 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 March 19, 2016, at 1:46 PM, the landlord served the tenant with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The personal service was confirmed as the tenant acknowledged receipt of the Notice of Direct Request Proceeding by signing the Proof of Service form.

Based on the written submissions of the landlord, and in accordance with section 89 of the *Act*, I find that the tenant has been duly served with the Direct Request Proceeding documents on March 19, 2016.

### 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 August 18, 2015, indicating a monthly rent of \$850.00 due on the 18th day of the month for a tenancy commencing on August 18, 2015;
- A Monetary Order Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlord establishes that there is unpaid rent owing in the amount of \$850.00 for the month of March 2016;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated March 10, 2016, which the landlord states was served to the tenant on March 12, 2016, for \$850.00 in unpaid rent due on March 01, 2016, with a stated effective vacancy date of March 20, 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 personal service via hand-delivery on March 12, 2016. The personal service was confirmed as the tenant acknowledged receipt of the Notice by signing the Proof of Service 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 landlords 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.

The tenancy agreement provided by the landlord demonstrates that the monthly rent is due on the 18th day of each month. On the bottom of the second page of the tenancy agreement, the landlord had provided a hand-written statement to indicate that the parties had mutually agreed to implement changes to the tenancy agreement. However, the landlord has not indicated the nature of the changes. As neither the signatures nor initials of either party appear next to the landlord's statement to demonstrate that the parties endorsed any amendments to the tenancy agreement, I will rely on the original terms of the tenancy agreement, which was signed by the landlord and the tenant on August 18, 2015, which demonstrates that the monthly rent is due on the 18<sup>th</sup> day of each month.

Section 46 of the *Act* provides that the landlord may issue a 10 Day Notice to End Tenancy for Unpaid Rent to the tenant after the day that rent is due. Section 46 provides, in part, the following:

**Landlord's notice: non-payment of rent**

- 46** (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

The application before me includes a tenancy agreement which demonstrates that the monthly rent is due on the 18th day of each month for a tenancy commencing on August 18, 2015. Therefore, in accordance with section 46 of the *Act*, if the rent remains unpaid after the day on which it is due, the earliest opportunity for the landlord to issue a 10 Day Notice to End Tenancy for Unpaid Rent would be the following day. In the matter before me, the landlord's earliest opportunity to issue the Notice to the tenant would have been on the 19th day of the month.

According to the monetary worksheet provided by the landlord, the landlord is seeking a monetary Order arising from unpaid rent owed for the month of March 2016. As the landlord issued the Notice on March 12, 2016, six days prior to the day of the month on which the monthly rent is due, March 18, 2016, I find that the landlord has issued the Notice to the tenant earlier than permitted under section 46 of the *Act*.

Therefore, I find that the Notice is not in compliance with the provisions of section 46 of the *Act* and 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 March 10, 2016 Notice, without leave to reapply. The landlord may wish to serve a new Notice to the tenant if the landlord so wishes.

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 March 10, 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: March 22, 2016

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Residential Tenancy Branch

