



# 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 a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 09, 2016, at 8:00 PM, the landlord served the tenant with the Notice of Direct Request Proceeding by way of leaving the documents on the stove inside the rental unit. The Proof of Service form establishes that the service was witnessed by “ML” and a signature for “ML” is included on the form.

### 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 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 January 15, 2016, indicating a monthly rent of \$850.00 due on the 15th day of the month for a tenancy commencing on January 15, 2016;

- 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, comprised of the balance of unpaid rent owing as of February 15, 2016;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated February 23, 2016, which the landlord states was served to the tenant on February 23, 2016, for \$850.00 in unpaid rent due on February 15, 2016, with a stated effective vacancy date of March 10, 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 registered mail on February 23, 2016. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing.

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

I have reviewed all documentary evidence provided by the landlord. Section 90 of the *Act* provides that because the Notice was served by registered mail, the tenant is deemed to have received the Notice five days after its mailing. In accordance with sections 88 and 90 of the *Act*, I find that the tenant is deemed to have received the Notice on February 28, 2016, five days after its registered mailing.

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 89 of the *Act* provides the approved methods by which documents comprising an application for dispute resolution can be served. Section 89 provides, in part, as follows:

**Special rules for certain documents**

**89** (2) An application by a landlord under section 55 [*order of possession for the landlord*], 56 [*application for order ending tenancy early*] or 56.1 [*order of possession: tenancy frustrated*] must be given to the tenant in one of the following ways:

(d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;

On the Proof of Service of the Notice of Direct Request Proceeding form, the landlord contends that service of the documents was carried out in a manner consistent with the provisions of section 89 of *Act*, as they were attached to a noticeable place at the address at which the tenant resides. The landlord's statement provides that the documents were left on the stove inside of the rental unit.

The information provided by the landlord with respect to the manner in which the hearing documents were served demonstrates that the documents were not attached or affixed to the door, nor were they attached to a noticeable place, as required under the service provisions of the *Act*, but were instead left on the stove in the unit. The landlord has not provided any further details to demonstrate that the documents were **attached to a noticeable place** [emphasis added]. Rather, the landlord has provided a statement which can be interpreted to be vague, as the landlord simply provides that the documents were "left on the stove", which does not demonstrate that they were attached, as required under the provisions of section 89(2) of the *Act*. Therefore, I find that the landlord has not served the hearing documents in a manner approved, by attaching them to the door or other conspicuous place, as provided under section 89(2) of the *Act*.

I further find that there is no evidence before me that establishes that the landlord was given leave to serve the Direct Request Proceeding documents in an alternate fashion as ordered by a delegate of the director of the Residential Tenancy Branch in accordance with sections 89(1)(e) or 89(2)(e) of the *Act*.

Based on the foregoing, I find that the landlord has not served the Notice of Direct Request Proceeding containing a copy of the application for dispute resolution in accordance with the *Act*. Therefore, I dismiss the landlord's application for an Order of Possession and a monetary Order with leave to reapply.

It remains open to the landlord to reapply for dispute resolution via the Direct Request process if all requirements for an application for dispute resolution via Direct Request, as outlined in Policy Guideline #39, can be met, or, in the alternative, the landlord may wish to submit an application for dispute resolution to be heard via a participatory hearing.

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 16, 2016

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Residential Tenancy Branch

