



# Dispute Resolution Services

Page: 1

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 17, 2016, the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. The Proof of Service form also establishes that the service was witnessed by “NT” and a signature for NT 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*?

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’s agent on September 20, 2015, and signed by the tenant on October 01, 2015, indicating a monthly rent of \$2,000.00 due on the first day of the month for a tenancy commencing on November 01, 2015;

- A Monetary Order Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$2,000.00 for outstanding rent, comprised of the balance of unpaid rent owing for March 2016;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated March 08, 2016, which the landlord states was served to the tenant on March 08, 2016, for \$2,000.00 in unpaid rent due on March 01, 2016, with a stated effective vacancy date of March 18, 2016; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent "BD" served the Notice to the tenant on March 08, 2016 by way of posting it to the door of a location bearing an address different than the address identified as the rental unit on both the application for dispute resolution form and on the tenancy agreement. The Proof of Service form establishes that the service was witnessed by "AD" and a signature for "AD" 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 88 of the *Act* provides the approved methods by which documents can be served. Section 88 reads, in part, as follows:

**88** All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

(g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;

(i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];

On the first page of the Proof of Service of the Notice form, the landlord's agent "BD" checked a box indicating that the Notice was attached to the door or other conspicuous place. The landlord's agent further provides, under the "special details" section of the form, that a copy of the Notice was posted on the front door of a location bearing an address different than the address identified as the rental unit on both the application for dispute resolution form and on the tenancy agreement.

Section 88(g) of the *Act* permits service of the Notice to the tenant by attaching a copy to a door or other conspicuous place at the address at which the person resides. However, the landlord's agent has posted the Notice to a door at a location other than the rental unit. Furthermore, the landlord has not provided any evidentiary material to explain why the Notice was served by posting it to the door of a location which is not the rental unit, and further, the landlord has not provided any documentary evidence to demonstrate that the tenant resides at the location where the Notice was served, which is not the same address as the rental unit.

Therefore, I find that the landlord has not demonstrated that the Notice was attached to the door or other conspicuous place at the address at which the person resides, as permitted by the *Act*. I further find that the tenant has not been served with the Notice in a manner consistent with the service provisions for documents as provided under section 88 of the *Act*. I also find that there is no evidence before me that establishes that the landlord was given leave to serve the Notice in an alternative fashion as ordered by a delegate of the director of the Residential Tenancy Branch in accordance with section 88(i) of the *Act*.

Based on the foregoing, I find that the landlord has not demonstrated that the Notice was properly served in accordance with the *Act*, and therefore, the Notice is set aside and is of no force and effect.

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** (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

(c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

On the Proof of Service of the Notice of Direct Request Proceeding form, the landlord contends that service of the hearing documents was carried out in a manner consistent with the provisions of section 89 of *Act*, as they were sent by registered mail to the address at which the tenant resides. However, the information provided by the landlord on the Proof of Service of the Notice of Direct Request Proceeding form, and on the Canada Post Customer Receipt containing the Tracking Number, demonstrates that the documents were mailed to an address that is different than the address identified as the rental unit on both the application for dispute resolution form and on the tenancy agreement.

The landlord has not provided any evidentiary material to clarify why the documents were mailed to an address other than the rental unit, or to demonstrate that the address to which the documents were mailed is in fact an address at which the tenant resides. Therefore, I find that the landlord has not served the hearing documents in a manner approved under the *Act*, by sending a copy by registered mail to the address at which the person resides, as provided under section 89(1) 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*.

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 08, 2016 Notice, without leave to reapply. The landlord may wish to serve a new Notice to the tenant if the landlord so chooses.

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 08, 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 21, 2016

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Residential Tenancy Branch

