



# 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 landlords for an Order of Possession based on unpaid rent and a monetary Order.

The landlords submitted two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on April 12, 2016, the landlord “MM” served each of the above-named tenants with the Notice of Direct Request Proceeding via registered mail. The landlords provided two copies of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received 5 days after service. The Proof of Service form also establishes that the service was witnessed by “HK” and a signature for “HK” is included on the form.

Based on the written submissions of the landlords, and in accordance with sections 89 and 90 of the *Act*, I find that the tenants have been deemed served with the Direct Request Proceeding documents on April 17, 2016, the fifth day after their registered mailing.

### Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

### Background and Evidence

The landlords submitted the following evidentiary material:

- Two copies 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 landlords and the tenant "KM" on December 01, 2015 , indicating a monthly rent of \$1,400.00 due on the first day of the month for a tenancy commencing on December 01, 2015. Although a signature for the tenant "DM" does not appear on the tenancy agreement, the tenant "DM" did sign the addendum which forms a part of the tenancy agreement;
- A copy of an "Application for Dispute Resolution by Direct Request" which the landlord filed on April 08, 2016, and which, along with the application filing fee, was established as being received by the Residential Tenancy Branch on April 08, 2016;
- A Monetary Order Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlords establish a monetary claim in the amount of \$1,400.00, comprised of the balance of unpaid rent owed for the month of April 2016;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated April 02, 2016, which the landlords state was served to the tenants on April 02, 2016 for \$1,400.00 in unpaid rent due on April 01, 2016, with a stated effective vacancy date of April 12, 2016; and
- A copy of the Proof of Service of the Notice showing that the landlord "JW" served the Notice to the tenants by way of posting it to the door of the rental unit at 9:30 AM on April 02, 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 tenants 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 tenants did not apply to dispute the Notice within five days from the date of service and the landlords alleged that the tenants 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 landlords. Section 90 of the *Act* provides that because the Notice was served by posting the Notice to the door of the rental unit, the tenants are deemed to have received the Notice three days after its posting. In accordance with sections 88 and 90 of the *Act*, I find that the tenants are deemed to have received the Notice on April 05, 2016, three days after its posting.

Section 46 of the *Act* provides, in part, the following with respect to a 10 Day Notice to End Tenancy for Unpaid Rent:

**46** (4) Within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

Section 55(2) of the *Act* provides, in part, the following with respect to a landlord's ability to request an order of possession of a rental unit:

**Order of possession for the landlord**

**55** (2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

- (b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;

I find that, as the tenants received the Notice on April 05, 2016, the tenants' latest opportunity to either pay, in full, the amount listed on the Notice, or to file for dispute

resolution to dispute the Notice, would have been April 10, 2016. As April 10, 2016 falls on a Sunday, the tenants' latest opportunity to either pay, in full, the amount listed on the Notice, or to file for dispute resolution to dispute the Notice, would have then become the following Monday, April 11, 2016. By extension of the provisions of subsection 55(2)(b) of the *Act*, the landlords' earliest opportunity to apply for an Order of Possession would therefore have been April 12, 2016.

I find that the landlords have filed an application for an Order of Possession and a monetary Order via dispute resolution by Direct Request earlier than permitted by the *Act*, as the landlords filed an "Application for Dispute Resolution by Direct Request" on April 08, 2016, which, along with the application filing fee, was established as being received by the Residential Tenancy Branch on April 08, 2016.

I further find that the landlords have not provided any evidentiary material to demonstrate that the tenants received the April 02, 2016 Notice earlier than April 05, 2016. Based on the foregoing, the landlords' application for an Order of Possession and a monetary Order based on unpaid rent is dismissed with leave to reapply.

### Conclusion

I dismiss the landlords' application 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: April 20, 2016

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Residential Tenancy Branch