



# 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 two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on April 14, 2016, the landlord “JR” served each of the above-named tenants with the Notice of Direct Request Proceeding via registered mail. The landlord 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 five days after service.

Based on the written submissions of the landlord, 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 19, 2016, the fifth day after their registered mailing.

### 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:

- 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 landlord “JR” and the tenants on March 07, 2015, indicating a monthly rent of \$1,400.00 due on the last day of the month preceding the month for which rent is due for a tenancy commencing on March 15, 2015. Although an individual identified as “GR” is included on the application for dispute resolution as an applicant landlord, “GR” is not listed as a landlord on the tenancy agreement. As neither the name nor signature for “GR” appears on the tenancy agreement to demonstrate that “GR” entered into a tenancy agreement with the tenants, I will consider the application with “JR” being the sole landlord;
- A Monetary Order Worksheet showing the rent owing and paid during the portion of this tenancy in question, on which the landlord indicates that there is unpaid rent in the amount of \$134.92 owing as of February 29, 2016. The landlord indicates that a partial payment of \$1,265.08 was received on February 29, 2016. On the application for dispute resolution form, the landlord establishes a monetary claim in the amount of \$134.00 for unpaid rent;
- A copy of a receipt which demonstrates that a partial payment of \$1,180.00 was provided by the tenants on March 31, 2016, and was acknowledged by the landlord as being received for use and occupancy only;
- A copy of a document which demonstrates that the tenant “MB” provided a payment of \$1,180.00 on March 31, 2016 by way of an Interac e-Transfer payment;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated March 23, 2016, which the landlord states was served to the tenants on March 25, 2016, for \$134.92 in unpaid rent due on February 29, 2016, with a stated effective vacancy date of March 22, 2016; and
- A copy of the Proof of Service of the Notice showing that the landlord’s agent “GR” served the Notice to the tenants by way of leaving a copy in the mailbox or mail slot at the tenants’ residence at 7:52 PM on March 25, 2016. The Proof of Service form establishes that the service was witnessed by “JR” and a signature for “JR” 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 landlord alleged that the tenants 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 way of leaving a copy in the mail box or mail slot at the tenants' residence, the tenants are deemed to have received the Notice three days after it was left in the mail box or mail slot. In accordance with sections 88 and 90 of the *Act*, I find that the tenants are deemed to have received the Notice on March 28, 2016, three days after it was left in the mail box or mail slot.

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 52 of the *Act* provides the following with respect to a notice to end tenancy:

**52** In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

The March 23, 2016 Notice issued to the tenants, under the section where the tenants names are to be placed on the Notice, does not contain a name for either tenant. Instead, the landlord has placed her own name in the field of the Notice where the name

of one tenant, or both tenants, is to be provided. The Notice includes instructions which demonstrate that the full names of the tenants are required. I find that the copy of the Notice provided by the landlord does not include a name for either of the tenants identified as respondents on the application for dispute resolution, and identified as tenants on the tenancy agreement included with the application before me. I find this sufficiently invalidates the Notice. Therefore, I find the Notice is not in accordance with section 52 of the *Act*, and therefore, the Notice 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 23, 2016 Notice, without leave to reapply. The landlord may wish to serve a new Notice to the tenants to address any unpaid rent owing with respect to the tenancy.

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 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: April 18, 2016

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Residential Tenancy Branch