



# 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 July 15, 2016, the landlord sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the Direct Request Proceeding documents on July 20, 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:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding served to the tenant;

- A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated June 27, 2016, and sent to the tenant by registered mail on July 14, 2016, with a stated effective vacancy date of July 7, 2016, for \$4,816.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the 10 Day Notice was sent to the tenant by registered mail at 10:00 am on July 14, 2016. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. The 10 Day Notice states that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end.

### Analysis

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on July 19, 2016, five days after its registered mailing.

Section 46 (4) of the *Act* states that, within five days of a tenant receiving the 10 Day Notice, the tenant may either pay the rent or dispute the 10 Day Notice.

I find that the fifth day for the tenant to have either paid the rent or disputed the notice is July 24, 2016, which was a Sunday. The Residential Tenancy Branch is closed on Saturdays and Sundays, meaning that the latest day on which the tenant could have disputed the 10 Day Notice was on Monday, July 25, 2016.

I further find that the landlord applied for dispute resolution on July 14, 2016, the same day the 10 Day Notice was served to the tenant. The earliest date that the landlord could have applied for dispute resolution is July 26, 2016, meaning that the landlord made their application for dispute resolution too early.

It should also be noted that 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 that such evidentiary material 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 Policy Guideline on Direct Requests provides the following requirements:

When making an application for dispute resolution through the direct request process, the landlord must provide copies of:

- **the tenancy agreement;**
- documents showing changes to the tenancy agreement or tenancy, such as rent increases, or changes to parties or their agents;
- *Direct Request Worksheet* (form RTB-46) setting out the amount of rent or utilities owing which may be accompanied by supporting documents such as a rent ledger or receipt book;
- the *10 Day Notice to End Tenancy for Unpaid Rent or Utilities* (this is often considered proof that the tenant did not pay rent); and,
- proof that the landlord served the tenant with the *10 Day Notice to End Tenancy for Unpaid Rent or Utilities*.

I find that the landlord did not provide a copy of a tenancy agreement, which is a requirement of the Direct Request process.

Therefore, I dismiss the landlord's application to end this tenancy and obtain an Order of Possession on the basis of the 10 Day Notice of June 27, 2016, with leave to reapply.

For the same reasons identified above, I dismiss the landlord's application for a Monetary Order with leave to reapply.

### Conclusion

The landlord's application for an Order of Possession on the basis of the 10 Day Notice of June 27, 2016 is dismissed, with 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: July 28, 2016

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Residential Tenancy Branch