



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## EX PARTE PROCEEDING

### (DIRECT REQUEST PROCEEDING)

Pursuant to section 55(4) of the *Residential Tenancy Act*, the decision in this matter was made without a participatory hearing. The decision was based on an undisputed 10 day Notice to End Tenancy and the written submissions of the Landlords.

## 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 a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 17, 2017, the landlords sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlords provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the landlords 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 January 22, 2017, 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:

- 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 landlords and the tenant on September 23, 2016, indicating a monthly rent of \$1,875.00, due on the first day of the month for a tenancy commencing on October 1, 2016;
- A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated January 4, 2017, with a stated effective vacancy date of January 14, 2017, for \$1,900.00 in unpaid rent; and
- A copy of a second 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated January 13, 2017, and posted to the tenant's door on January 13, 2017, with a stated effective vacancy date of January 23, 2017, for \$1,900.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the 10 Day Notice of January 4, 2017 was posted to the tenant's door at 9:00 pm on January 4, 2017.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice of January 13, 2017 was posted to the tenant's door at 3:45 pm on January 13, 2017.

The 10 Day Notices state 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

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.

In this type of matter, the landlords must prove that they served the tenant with the 10 Day Notice in a manner that is considered necessary as per Sections 71(2) (a) and 88 of the *Act*. Residential Tenancy Policy Guideline # 39 contains the details about the key elements that need to be considered when making an application for Direct Request.

### **PROOF OF SERVICE**

#### **10-Day Notice to End Tenancy**

The landlord must prove the tenant was served with the 10-Day Notice to End Tenancy.

A landlord must serve the tenant with a 10-Day Notice to End Tenancy by:

- registered mail;

- in person, with a witness verifying it was served; or

- by posting it on the tenant's door or in an equally conspicuous place, **with a witness**

**verifying it was served.**

Proof of service of the 10 Day Notice to End Tenancy may take the form of:

- registered mail receipt and printed tracking report;

- a receipt signed by the tenant, stating they took hand delivery of the document(s); or

- a witness statement that they saw the landlord deliver the document(s).

On the second page of the Proof of Service Notice to End Tenancy of January 4, 2017, there is no signature of a witness to confirm service of the 10 Day Notice to the tenant. I find I am not able to confirm service of the 10 Day Notice of January 4, 2017.

However, 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 of January 13, 2017 on January 16, 2017, three days after its posting.

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.

The definition of days in the Residential Tenancy Branch Rules of Procedure states that: "If the time for doing an act in a business office falls or expires on a day when the

office is not open during regular business hours, the time is extended to the next day that the office is open”.

I find that the fifth day for the tenant to have either paid the rent or disputed the notice of January 13, 2017 was January 21, 2017, which was a Saturday. 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 of January 13, 2017 was on Monday, January 23, 2017.

I further find that the landlords applied for dispute resolution on January 13, 2017, the same day that the landlords issued the second 10 Day Notice.

Due to the deficiencies listed above, the landlords’ application 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: January 24, 2017

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Residential Tenancy Branch