



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR

### 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.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on September 19, 2017, the landlord personally served Tenant H.B. the Notice of Direct Request Proceeding. The landlord had a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm personal service. Based on the written submission of the landlord and in accordance with section 89 of the *Act*, I find that Tenant H.B. has been duly served with the Direct Request Proceeding documents on September 19, 2017.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on September 19, 2017, the landlord personally served Tenant J.B. by leaving the Notice with Tenant H.B., an adult who resides with Tenant J.B. The landlord had a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm this service. Based on the written submission of the landlord and in accordance with section 89(2) of the *Act*, I find that Tenant J.B. has been duly served with the Direct Request Proceeding documents on September 19, 2017.

### 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*?

### Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord on June 29, 2012 and by the tenants on July 03, 2012, indicating a monthly rent of \$675.00, due on the first day of each month for a tenancy commencing on July 01, 2012;
- Two copies of Notice of Rent Increase forms showing the rent being increased from \$675.00 to the current monthly rent amount of \$719.00;
- 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 September 07, 2017, with a stated effective vacancy date of September 17, 2017, for \$119.00 in unpaid rent.

### 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 of 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. The onus is on the landlord to present evidentiary material that 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.

Section 52 of the *Act* provides the following requirements regarding the form and content of notices 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,...and
- (e) when given by a landlord, be in the approved form...

I have reviewed all documentary evidence and I find that the 10 Day Notice is not signed by the landlord. I find that this omission invalidates the 10 Day Notice as the landlord has not complied with the provisions of section 52 of the *Act*.

I also note the following deficiencies that would have made this application unsuitable for the direct request process in any event, as follows:

- The landlord 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*. In that regard, Section 88 of the *Act* allows for the 10 Day Notice to be left with an adult who resides with the tenant. The Proof of Service Notice to End Tenancy submitted as evidence describes service in the Special Details as follows: “Believed to be son that is not a tenant on lease.” There is no indication or documentation in the evidence that the person who received the Notice is an adult.
- On the first page of the Proof of Service Notice to End Tenancy the date and time of service of the Notice to End Tenancy were not completed.
- The landlord’s name on the residential tenancy agreement does not match the landlord’s name on the Application for Dispute Resolution, the 10 Day Notice or any other documentation submitted with the Application for Dispute Resolution. There is also no documentation referring to the transfer of responsibilities from the landlord named on the residential tenancy agreement to the landlord applying for dispute resolution.

Therefore, I dismiss the landlord’s application to end this tenancy and obtain an Order of Possession on the basis of the unsigned 10 Day Notice of September 07, 2017, without leave to reapply.

The unsigned 10 Day Notice of September 07, 2017 is cancelled and of no force or effect.

### Conclusion

The landlord’s application for an Order of Possession on the basis of the unsigned 10 Day Notice of September 07, 2017, is dismissed, without leave to reapply.

The unsigned 10 Day Notice of September 07, 2017, is cancelled and of no force or effect.

This tenancy continues until it is ended in accordance with the *Act*.

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: September 26, 2017

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Residential Tenancy Branch