



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR-DR

### 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 November 7, 2017, 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 will be deemed served with the Direct Request Proceeding documents on November 12, 2017, 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*?

### Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on January 1, 2015, indicating a monthly rent of \$865.00, due on the first day of each month for a tenancy commencing on January 1, 2015;
- 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 October 27, 2017, with a stated effective vacancy date of November 7, 2017, for \$897.00 in unpaid rent.

### 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 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*. 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).**

I find that the landlord has not submitted the second page of the Proof of Service Notice to End Tenancy form, where a signature of a witness to confirm service of the 10 Day Notice to the tenant would appear.

As I am not able to confirm service of the 10 Day Notice to the tenant, which is a requirement of the Direct Request proceeding, the landlord's application to end this tenancy and obtain an Order of Possession is dismissed with leave to reapply.

Conclusion

I dismiss the landlord's 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: November 08, 2017

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Residential Tenancy Branch