



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPRM-DR, FFL

### 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 an Affidavit of Attempted Service which states that there were several attempts made to personally serve the tenant the Notice of Direct Request Proceeding documents. However, according the Affidavit, service was not completed upon the tenant.

### 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*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 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 September 27, 2017, indicating a monthly rent of \$1,600.00, due on the first day of each month for a tenancy commencing on October 1, 2011;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated October 6, 2017 for \$800.00 in unpaid rent (the October 10 Day Notice). The October 10 Day Notice provides 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 on the stated effective vacancy date of October 16, 2017;
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the October 10 Day Notice was placed in the tenant's mailbox or mail slot, sent to the tenant by registered mail, and sent to the tenant by e-mail at 11:30 am on October 7, 2017;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated November 20, 2017 for \$2,400.00 in unpaid rent (the November 10 Day Notice). The November 10 Day Notice provides 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 on the stated effective vacancy date of November 30, 2017;
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the November 10 Day Notice was posted to the tenant's door at 2:30 pm on November 20, 2017; and
- A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

### 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 they served the tenant the Notice of Direct Request proceeding with all the required inclusions as indicated on the Notice as per subsections 89 (1) and (2) of the *Act* which permit service by either leaving a copy with the person, sending a copy by registered mail to the address at which the person resides, leaving a copy with an adult who apparently resides with the tenant; or

attaching a copy to the door or other conspicuous place at the address at which the tenant resides.

I find that the landlord has not served the Notice of Direct Request Proceeding to the tenant by any of the means permitted in section 89 of the *Act*.

Since I find that the landlord has not served the tenant with notice of this application in accordance with section 89 of the *Act*, the landlord's application for an Order of Possession and a Monetary Order for unpaid rent is dismissed, with leave to reapply.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

I dismiss the landlord's application for an Order of Possession and a Monetary Order for unpaid rent with leave to reapply.

I dismiss the landlord's application to recover the filing fee paid for this application without 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: December 21, 2017

---

Residential Tenancy Branch