



# 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 a Proof of Service of the Notice of Direct Request Proceeding form, on which the landlord contends that on January 17, 2016, the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail.

### 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’s agent and the tenant on June 25, 2013, indicating a monthly rent of \$1,727.00, due on the last day of the month preceding the month for which rent is due;
- A Direct Request Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$1,926.00 for outstanding rent, comprised of the balance of unpaid rent due by December 31, 2017;

- Copies of “Notice of Rent Increase” forms provided to the tenant during the course of the tenancy;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated January 01, 2018, which the landlord states was served to the tenant on January 01, 2018, for \$1,926.00 in unpaid rent due on December 31, 2017, with a stated effective vacancy date of January 11, 2018; and
- A copy of the Proof of Service of the Notice asserting that the landlord’s agent served the Notice to the tenant by way of posting it to the door of the rental unit on January 01, 2018.

The Notice restates section 46(4) of the *Act* which provides that the tenant had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the effective date of the Notice. The tenant did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenant did not pay the rental arrears.

### 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 for 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.

In this type of matter, the landlord must prove they served the tenant with the Notice of Direct Request Proceeding, the Notice, and all related documents with respect to the Direct Request process, in accordance with the Act and Policy Guidelines. 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 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.

I have reviewed all relevant documentary evidence provided by the landlord. Section 89 of the *Act* provides the approved methods by which an application for dispute resolution can be served. Section 89 provides, in part, as follows:

### **Special rules for certain documents**

**89** (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;

(b) if the person is a landlord, by leaving a copy with an agent of the landlord;

(c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

(d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;

(e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

(2) An application by a landlord under section 55 [*order of possession for the landlord*], 56 [*application for order ending tenancy early*] or 56.1 [*order of possession: tenancy frustrated*] must be given to the tenant in one of the following ways:

(a) by leaving a copy with the tenant;

(b) by sending a copy by registered mail to the address at which the tenant resides;

(c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;

(d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;

(e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

In the Direct Request process, the landlord must prove they served the tenant with 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 sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord." The definition of registered mail is set out in section 1 of the *Act* as "any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available."

Under the provisions of Policy Guideline #39 – Direct Requests, the onus is on the landlord to serve the Notice of Direct Request Proceeding in a manner approved under section 89 of the *Act*. Section 89 of the *Act* does permit a respondent to be served the Direct Request Proceeding documents by way of registered mail.

However, Policy Guideline #39 states that the landlord must complete and submit the Proof of Service Notice of Direct Request Proceeding form that was included as part of the landlord's Direct Request package. Although the landlord has attempted to prove service of the documents by providing copies of Canada Post Registered Mail tickets which include tracking numbers, I find that within the Direct Request Process, the landlord remains obligated to prove service of the documents by completing the proof of service form that was included as part of the landlord's package.

The landlord has not completed all sections of the Proof of Service Notice of Direct Request Proceeding form, as the form does not contain the name and signature of the person serving

the hearing documents. The Proof of Service Notice of Direct Request Proceeding form requires that the person serving the documents provide their name and signature, as this allows for a person to attest to having served the hearing documents to the respondent tenant.

As the landlord has not completed the Proof of Service Notice of Direct Request Proceeding form as required under the provisions of Policy Guideline #39, I find that the landlord has not sufficiently established that the Direct Request Proceeding documents have been served in accordance with Policy Guideline #39, and further find that I am not able to confirm service of the Notice of Direct Request to the tenant, which is a requirement of the Direct Request process.

I further find that there is no evidence before me that establishes that the landlord was given leave to serve the Direct Request Proceeding documents in an alternate fashion as ordered by a delegate of the director of the Residential Tenancy Branch in accordance with sections 89(1)(e) or 89(2)(e) 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. Policy Guideline # 39 directs that, as part of the application, a landlord must include proof that the landlord served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent. Policy Guideline 39 describes that the applicant must include a completed "Proof of Service of the Notice to End Tenancy" form to demonstrate that the Notice to End Tenancy was served to the tenant in a manner permitted under the *Act*. Policy Guideline 39 provides, in part, the following:

### C. PROOF OF SERVICE

#### C.1. 10 DAY NOTICE TO END TENANCY

The landlord must prove the tenant was served with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (form RTB-30). A Proof of Service Notice to End Tenancy and Written Demand to Pay Utilities (form RTB-34) can be used for this purpose. Because the tenant does not have an opportunity to present evidence on the issues in a direct request proceeding, it is essential that the landlord provide substantive proof of service.

While a landlord may use any method of service allowed under the Legislation to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, if the landlord cannot provide clear proof of service, the director's delegate ("the director") may dismiss the application with or without leave to reapply or adjourn it to be reconvened as a participatory hearing.

On the Proof of Service of the Notice to End Tenancy form, the landlord contends that the landlord's agent served the Notice to End Tenancy to the tenant by way of posting it to the door of the rental unit. However, within the Direct Request process, the person serving the Notice to End Tenancy must provide their name and signature on the Proof of Service of the Notice to End Tenancy form. The Proof of Service of the Notice to End Tenancy form serves to allow the

person serving the Notice to End Tenancy to provide a written attestation to confirm service of the Notice.

I find that the form submitted by the landlord indicates that the agent serving the notice did not provide a name and signature on the second page of the form in the field where service of the Notice to End Tenancy is to be confirmed. Based on the foregoing, I find that I am not able to confirm service of the 10 Day Notice to the tenant, which is a requirement of the Direct Request process.

As previously indicated, in an ex parte Direct Request Proceeding, the onus is on the applicant landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. I find that there are deficiencies with this application, as outlined above, which cannot be clarified by way of the Direct Request Proceeding. These deficiencies cannot be remedied by inferences in the absence of more evidentiary material, or oral testimony, which may clarify the questions raised by these inconsistencies.

Based on the foregoing, I dismiss the landlord's application for an Order of Possession and a monetary Order with leave to reapply.

It remains open to the landlord to reapply for dispute resolution via the Direct Request process if all requirements for an application for dispute resolution via Direct Request, as outlined in Policy Guideline #39, can be met, or, in the alternative, the landlord may wish to submit an application for dispute resolution to be heard via a participatory hearing.

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

The landlord's application is dismissed 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 19, 2018

---

Residential Tenancy Branch