



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ARIAS & ASSOCIATES PROPERTIES, LTD  
and [tenant name suppressed to protect privacy]

## **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 February 21, 2018, the landlord’s agent “LR” served the tenant with the Notice of Direct Request Proceeding by way of posting it to the door of the rental unit. The Proof of Service form establishes that the service was witnessed by “MR” and a signature for “MR” is included on the form.

Based on the written submissions of the landlord, 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 February 24, 2018, three days after their posting.

### 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 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 landlord’s agent and the tenant on October 01, 2017, indicating a monthly rent of \$3,000.00, due on the first day of the month for a tenancy commencing on October 01, 2017;

- A Direct Request Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlord establishes that there is unpaid rent owed in the amount of \$12,000.00, comprised of the balance of unpaid rent due for the period of November 2017 to February 2018;
- A copy of an undated 10 Day Notice to End Tenancy for Unpaid Rent (the Notice); and
- A copy of the Proof of Service of the Notice asserting that the landlord's agent "LR" served the Notice to the tenant by way of leaving a copy in the mailbox or mail slot at the tenant's.

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.

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 provided by the landlord and find that the 10 Day Notice to End Tenancy for Unpaid Rent (the Notice), served to the tenant does not adhere to the provisions of section 52 of the *Act*. The Notice does not include the effective date (the day when the tenant must move out of or vacate the site) of the Notice. Additionally, the Notice does not adhere to section 52(b), as it does not provide the address of the rental unit from which the tenant must move out of and vacate. The Notice also fails to adhere to section 52(a), as it is not signed and dated by the landlord giving the Notice.

The Notice contains a further deficiency, as under the section where the tenant's name is to be placed on the Notice, it does not contain the name for the tenant. Instead, in the field of the Notice where the name of the tenant is to be provided, the landlord has written the partial name of the landlord. The Notice includes instructions which demonstrate that the full name of the tenant is required. I find that the copy of the Notice provided by the landlord does not include a name for the tenant identified as the respondent on the application for dispute resolution, and identified as the tenant on the tenancy agreement included with the application before me.

Based on the foregoing, I find that the Notice contains deficiencies, as outlined above, and find that the Notice is not in compliance with the provisions of section 52 of the *Act* and is set aside and is of no force and effect.

As the landlord's application for an Order of Possession arises from a Notice that has been set aside, I dismiss the landlord's application for an Order of Possession, based on the undated 10 Day Notice to End Tenancy for Unpaid Rent included as part of this application, without leave to reapply.

Conclusion

I dismiss the landlord's application for an Order of Possession, based on the undated 10 Day Notice to End Tenancy for Unpaid Rent included as part of this application, without leave to reapply.

The undated 10 Day Notice to End Tenancy for Unpaid Rent included as part of this application is cancelled and is 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: February 23, 2018

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Residential Tenancy Branch