



# Dispute Resolution Services

Page: 1

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 February 24, 2018, the landlord posted the Notice of Direct Request Proceeding to the door of the rental unit. 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 sections 89(2) and 90 of the *Act*, I find that the tenant is deemed to have been served with the Direct Request Proceeding documents on February 27, 2018, the third day 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 a residential tenancy agreement which was signed by the landlord and the tenant on August 28, 2013, indicating a monthly rent of \$1,100.00, due on the first day of each month for a tenancy commencing on September 1, 2013;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated February 15, 2018 for \$2,344.00 in unpaid rent (the 10 Day Notice). The 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 February 25, 2018;

- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was handed to Person L.R. at 1:30 pm on February 15, 2018; and
- A Direct Request 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 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*. 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 indicates service to Person L.R., but there is no indication or documentation in the evidence that the person who received the documents is an adult.

I find that I am not able to confirm service of the 10 Day Notice to the tenant in accordance to section 88 of the *Act*, and for this reason, the landlord's application for an Order of Possession is dismissed with leave to reapply.

### Conclusion

I dismiss the landlord's application for an Order of Possession 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: February 28, 2018

---

Residential Tenancy Branch