



# Dispute Resolution Services

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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 signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 02, 2018, the landlord served the respondent “LR” 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 “BH” and a signature for “BH” 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 respondent “LR” has been deemed served with the Direct Request Proceeding documents on March 05, 2018, three days after their posting.

The landlord has not provided a signed Proof of Service of the Notice of Direct Request Proceeding form for the tenant “RG” and has not established that the tenant “RG” has been served the Notice of Direct Request Proceeding. Therefore, I dismiss the landlord’s application against the tenant “RG” with leave to reapply. I will hear the landlord’s application against the respondent “LR” only.

### 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 has provided a copy of a residential tenancy agreement which lists two individuals as tenants, identified as “LR” and “RG”. Although “LR” is listed as a respondent tenant on the Application for Dispute Resolution by Direct Request, a signature for “LR” does not appear on the tenancy agreement to demonstrate that “LR” entered into a tenancy with the applicant landlord and endorsed the terms of the tenancy agreement as a tenant.

### 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.

“Policy Guideline #39. Direct Requests” provides the guidelines which govern the Direct Request process. The guideline provides that the onus is on the landlord to ensure that they have included all required documents necessary for an application for dispute resolution via the Direct Request process. Policy Guideline #39 establishes that the landlord must provide, when making an application for dispute resolution, a copy of the tenancy agreement. Section 13 of the *Act* provides, in part, the following with respect to the requirements for tenancy agreements:

(2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

(b) the correct legal names of the landlord and tenant;

Section 12 of the *Residential Tenancy Regulation* provides, in part, the following with respect to the requirements for tenancy agreements:

**12 (1)** A landlord must ensure that a tenancy agreement is

(b) signed and dated by both the landlord and the tenant,

Within the Direct Request process, the tenancy agreement is considered to be a vital document which establishes the parties to the tenancy agreement, the correct address of the rental unit, and the details agreed upon by the parties to the agreement, such as the day in the month on which the rent is due. The manner in which the copy of the tenancy agreement provided by the landlord presents demonstrates that the respondent "LR" did not sign the tenancy agreement to endorse the terms of the agreement and enter into a tenancy with the applicant landlord identified on the Application for Dispute Resolution by Direct Request and in the tenancy agreement.

In the absence of a complete tenancy agreement which establishes that the respondent "LR" endorsed the terms of the tenancy agreement by the signing the agreement, I find that the landlord's application contains a deficiency which does not permit me to consider this application for dispute resolution via the Direct Request process against the respondent "LR".

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

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.

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

I dismiss the landlord's application for an Order of Possession with leave to reapply.

I dismiss the landlord's application for a monetary Order with leave to reapply.

I dismiss the landlord's request to recover the \$100.00 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: March 19, 2018

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Residential Tenancy Branch