



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR-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.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding form which declares that on March 05, 2018, the landlord “GA” served the tenant with the Notice of Direct Request Proceeding via registered mail.

On the Proof of Service of the Notice of Direct Request Proceeding form, the landlord has also declared that on March 05, 2018, the landlord’s agent “GA” served the tenant with the Notice of Direct Request Proceeding by way of posting it to a noticeable place, namely, the mailbox of the rental unit. The Proof of Service form establishes that the service was witnessed by “AA” and a signature for “AA” is included on the form.

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.”

On the Proof of Service of the Notice of Direct Request Proceeding form, the landlord has indicated that the tenant was served with the Direct Request Proceeding documents by way of registered mail. If service of the Direct Request Proceeding documents is carried out in this manner, the landlord must provide evidentiary material, in the form of a Canada Post Registered Mail receipt or ticket which includes the tracking number, as well as the name of the person to whom the registered mail item was addressed, as proof of service via registered mail.

I find that the Canada Post transaction receipt provided by the landlord does not contain any information to demonstrate that the mailing service purchased to mail the Direct Request Proceeding documents to the tenant was actually Canada Post's registered mail service.

I find that there is no evidentiary material before me to prove that the landlord served the Direct Request Proceeding documents by way of registered mail. Therefore, I will rely on the landlord's attestation provided on the Proof of Service of the Notice of Direct Request Proceeding form whereby the landlord states that the Direct Request proceeding documents were posted to the mailbox of the rental unit in the presence of a witness.

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 March 08, 2018, three days after their posting.

Although an individual identified as "GA" is included on the application for dispute resolution as an applicant landlord, "GA" is not listed as a landlord on the tenancy agreement. As neither the name nor signature for "GA" appears on the tenancy agreement to demonstrate that "GA" entered into a tenancy agreement with the tenant, I will consider the application with "NT" being the sole landlord, and amend the application to exclude "GA" as a party to this dispute.

#### 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 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 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 and the tenant on June 01, 2017, indicating a monthly rent of \$1,600.00, due on the first day of the month for a tenancy commencing on June 01, 2017;
- A Direct Request Worksheet;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated February 09, 2018, which the landlord states was served to the tenant on February 09, 2018, for \$1,400.00 in unpaid rent due on February 01, 2018, with a stated effective vacancy date of February 19, 2018; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent "GA" served the Notice to the tenant by way of leaving a copy in the mailbox or mail slot at the tenant's residence at 3:00 PM on February 09, 2018. The Proof of Service form establishes that the service was witnessed by "PA" and a signature for "PA" is included on the form.

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

I have reviewed all documentary evidence provided by the landlord. Section 90 of the *Act* provides that because the Notice was served by way of leaving a copy in the mail box or mail slot at the tenant's residence, the tenant is deemed to have received the Notice three days after it was left in the mail box or mail slot. In accordance with sections 88 and 90 of the *Act*, I find that the tenant is deemed to have received the Notice on February 12, 2018, three days after it was left in the mail box or mail slot.

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 of 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 with all the required inclusions as indicated on the Notice as per Section 89 of the *Act*. Section 89 reads, 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;

(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;

Section 89(2) of the *Act* does allow for the Notice of Direct Request Proceeding to be attached to the door of the rental unit or other conspicuous place at the address at which the tenant resides, only when considering the issuance of an Order of Possession for the landlord. As the landlord served the Notice of Direct Request Proceeding in accordance with section 89(2)(d) of the *Act*, I have leave to hear only that part of the landlord's application that asks for an Order of Possession. I do not have leave to hear the landlord's request to recover the \$100.00 filing fee paid for this application. Therefore, I dismiss the landlord's request to recover the \$100.00 filing fee paid for this application without leave to reapply.

I find that the tenant was obligated to pay monthly rent in the amount of \$1,600.00, as established in the tenancy agreement. I accept the evidence before me that the tenant has failed to pay rental arrears in the amount of \$1,400.00, comprised of the balance of unpaid rent owed by February 01, 2018 for the month of February 2018.

I accept the landlord's undisputed evidence and find that the tenant did not pay the rent owed in full within the five days granted under section 46 (4) of the *Act* and did not apply to dispute the Notice within that five-day period.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the Notice, February 22, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession based on the February 09, 2018 Notice served to the tenant for unpaid rent owed by February 01, 2018.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 14, 2018

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Residential Tenancy Branch