



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR

### 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 March 17, 2018, the landlord placed the Notice of Direct Request Proceeding on the dining table of the rental unit. The landlord provided a name and signature of a witness, "KJ", confirming such. Based on the written submissions of the landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the tenant is deemed to have been served with the Direct Request Proceeding documents on March 20, 2018, the third day after placing it on the dining table of the rental unit.

### 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 on November 27, 2017 and by the tenant on December 8, 2017, indicating a monthly rent of \$800.00, due on the first day of each month for a tenancy commencing on December 1, 2017;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) for \$800.00 in unpaid rent, owing on March 1, 2018. The 10 Day Notice was signed and dated March 2, 2018 but then indicates below that it was posted on the door on March 3, 2018. 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 March 13, 2018;

- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was placed under the tenant's door, by "SO" of Panorama Security, at 2:00 PM on March 3, 2018. The Proof of Service establishes that the service was witnessed by KJ, and a signature for KJ is included on the form; and
- A Direct Request Worksheet showing the rent owing for the months of February and March 2018, totaling \$1600.

### Analysis

Direct Request proceedings are *ex parte* proceedings whereby the opposing party is not invited to participate in the hearing or make any submissions. Without an ability for the tenant to participate, there is a much higher burden placed on the landlord in these types of proceedings, as opposed to 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.

Furthermore, in these types of proceedings, the onus is on the landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria. 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. Alternatively, the application may be dismissed. In this case, the landlord must prove that they served the tenant, in accordance with the *Act* and Policy Guidelines, with the 10 Day Notice and all related documents with respect to the Direct Request process.

I have reviewed all documentary evidence and I find it important to note that section 88 of the *Act* sets out the approved methods that a document, such as a 10 Day Notice to End Tenancy, can be served generally. While the landlord's agent, SO, checked a box on the first page of the Proof of Service Notice to End Tenancy form indicating that the 10 Day Notice was attached on the door or other conspicuous place, the landlord also stated, under the "Special Details" section, that the 10 Day Notice was placed under the door of the rental unit. On the second page of the Proof of Service Notice to End Tenancy, SO confirms that he had KJ witness him place the 10 Day Notice under the door of the rental unit on March 3, 2018. However, she signed this form on March 15, 2018.

I find that by serving the 10 Day Notice by way of placing it under the door of the rental unit, SO has not served the 10 Day Notice in a manner consistent with the service

provisions for documents as provided under section 88. I further find that there is no evidence before me that establishes that the landlord was given leave to serve the 10 Day Notice in an alternative fashion as ordered by a delegate of the director of the Residential Tenancy Branch in accordance with section 88(i) of the *Act*. Therefore, I find that as the 10 Day Notice was not properly served in accordance with the *Act*, it is set aside and of no effect.

As the landlord's application for an Order of Possession arises from a 10 Day Notice that has been set aside, I dismiss the landlord's application for an Order of Possession without leave to reapply. The landlord may wish to serve a new 10 Day Notice to the tenant in accordance with section 88 of the *Act*.

### Conclusion

I dismiss the landlord's application for an Order of Possession 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 21, 2018

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Residential Tenancy Branch