



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            OPRM-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 landlords for an Order of Possession based on unpaid rent and a Monetary Order.

The landlords submitted a signed Proof of Service Notice of Direct Request Proceeding which declared that on March 16, 2018, the landlords, via their agent, served the Notice of Direct Request Proceeding and the supporting documents to the tenant. The Proof of Service indicated that the package was hand delivered to the tenant and a stamp in the tenant’s signature block stated, “Delivered March 15, 20” (sic). The Proof of Service also indicated that the documents were served on March 16, 2018, via Registered Mail. The landlords had a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm one of the above methods. The landlords also provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm the registered mailing. Based on the written submissions of the landlords 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 21, 2018, five days after the package was mailed.

### Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to Sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to Section 67 of the *Act*?

### Background and Evidence

The landlords submitted the following evidentiary material:

- A copy of the Residential Tenancy Agreement which was signed by the landlords and the tenant on September 30, 2017, indicating a monthly rent of \$1,650.00, due on the first day of each month for a tenancy commencing on November 1, 2017;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated February 20, 2018 for \$3,300.00 in unpaid rent. 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 7, 2018;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicated that the landlords' agent served the 10 Day Notice by placing it under the tenant's door at 4:20PM on February 20, 2018; and
- A Direct Request Worksheet showing the rent owing and unpaid for the months of January, February and March 2018.

### 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 tenant to participate, there is a much higher burden placed on the 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 landlords must prove that they served the tenant with the 10 Day Notice in accordance with Section 88 of the *Act*.

Section 88 of the *Act* allows for service by either sending the 10 Day Notice to the tenant by mail, by leaving a copy with the tenant, by leaving a copy in the tenant's mailbox or mail slot, attaching a copy to the tenant's door or by leaving a copy with an adult who apparently resides with the tenant.

In the special details section of the Proof of Service Notice to End Tenancy, the landlords have indicated that they placed the 10 Day Notice under the door of the rental unit which is not a method of service as indicated above.

For the above reason, I find that the 10 Day Notice has not been served in accordance with section 88 of the *Act*.

Therefore, I dismiss the landlords' application to end this tenancy and obtain an Order of Possession on the basis of the 10 Day Notice of February 20, 2018, without leave to reapply.

For the same reason listed above, I dismiss the landlords' application for a Monetary Order for unpaid rent with leave to reapply.

The landlords must reissue the 10 Day Notice and serve it in one of the ways prescribed by section 88 of the *Act*, or according to Residential Tenancy Policy Guideline #39, if the landlords want to apply through the Direct Request process.

As the landlords were not successful in this application, I find that the landlords are not entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

The landlords' application for an Order of Possession based on the 10 Day Notice of February 20, 2018 is dismissed, without leave to reapply.

The 10 Day Notice of February 20, 2018 is cancelled and of no force or effect, therefore, this tenancy continues until it is ended in accordance with the *Act*.

I dismiss the landlords' application for a Monetary Order for unpaid rent 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: March 28, 2018

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Residential Tenancy Branch