



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes

OPRM-DR

### Introduction

The Landlord seeks an Order for Possession and an Order for payment of unpaid rent. The matter is filed as a Direct Request Proceeding. For the reasons as set out below the application must be dismissed, with leave to reapply.

### Issue(s) to be Decided

As a preliminary issue, I need to determine if I have evidence before me that meets the requirements of the *Residential Tenancy Act* ("RTA"), which will allow me to make findings of fact on a Direct Request Proceeding. The onus is on the party who is asking to proceed via this process to ensure that all and proper materials are before me in accordance with the requirements as set out in the RTA and related Policy Guidelines

### Background and Evidence

Pursuant to section 55(4) of the RTA, the decision in this matter was made without a participatory hearing. The decision is therefore based on a 10 Day Notice to End Tenancy, the other evidence filed as noted below and, the written submissions of the Landlord.

Policy Guideline 39 C3 sets out the required contents of the Notice of Dispute Resolution Package that must be served by the Landlord on the Tenant. These include a copy of the Notice to End Tenancy and, proof of service of this form.

Here there is no proof that the Notice to End Tenancy was served on the tenant based on the documentary evidence filed. The 10 Day Notice of End Tenancy (form RTB: 30) as filed was signed by the representative of the landlord on March 8, 2018. It sets out that this document was served on the tenant by mail also on March 8, 2018.

The Proof of Service of the 10 Day Notice (form RTB:34), filed with this application states that service of the 10 Day Notice was effected on February 7, 2018, by sending a copy via registered mail to the tenant's address. This date is confirmed by the witness statement which forms part of the Proof of Service Form and, by the Canada Post receipt as filed.

### Analysis

Section 89 (2) of the RTA confirms that there are prescribed methods for the service of documents, including an application by a landlord under section 55 for an Order of Possession.

Rule 3.5 of the Rules of Procedure provides that at the hearing, the applicant must demonstrate to the satisfaction of the arbitrator at the hearing that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence.

In an ex parte Direct Request Proceeding, the onus is on the landlord to ensure that all evidentiary material filed is in accordance with the prescribed criteria as to form and content 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.

There is a clear error as it is not possible to serve a document on February 7, 2018, that was only created and signed as of March 8, 2018. The Proof of Service Form filed cannot possibly relate to the 10 Day Notice of End Tenancy (form RTB: 30) that I have before me in evidence.

Accordingly, the landlord has not met the onus as set out above and, as this is the Application of the landlord seeking to recover both possession of the premises and a monetary reward via a Direct Request Proceeding, where the only evidence before me in in writing, I am not able to proceed based on the evidence as filed.

### Conclusion

For the reasons as set out above and based on the evidence before me, the application is dismissed 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 29, 2018

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Residential Tenancy Branch