



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Firm Management Corp  
and [tenant name suppressed to protect privacy]

## **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 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 the landlord sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord did not provide a registered mail customer receipt with the tracking number to confirm this method of service.

### 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*?

### Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement signed by the landlord and the tenant on September 2, 2015, indicating a monthly rent of \$900.00, due on the first day of each month for a month-to-month tenancy commencing on September 1, 2015.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated March 8, 2018 for \$1,215.00 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 21, 2018;

- A copy of a Notice of Rent Increase raising the tenant's monthly rent to \$930.00 on January 1, 2017;
- A copy of a Notice of Rent Increase raising the tenant's monthly rent to \$960.00 on January 1, 2018;
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenant's door at 3:00 p.m. on March 8, 2018. In the "Witness statement" section of the form, the name of the person serving the notice is not provided (only the company name is stated). There is a witness signature on the form, but the name of the witness is not provided; and
- A Direct Request Worksheet and tenant's statement of account showing the rent claimed and paid during the relevant portion of this tenancy. The Worksheet notes that the tenant's cumulative rent owing was \$1,680.00 on March 1, 2018, however, the tenant made partial rent payments of \$465.00 and \$480.00 on March 6, 2018 and March 22, 2018, respectively. Therefore, the landlord is claiming \$735.00 as the remaining rent amount owed by the tenant, which is a reduced amount from the \$1,215.00 originally stated on the 10 Day Notice.

### Analysis

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 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.

In this type of matter, the landlord must prove that they served the tenant with:

- The 10 Day Notice in accordance with Sections 88 and 90 of the *Act*; and
- The Notice of Direct Request proceeding package, along with all the supporting documents, in accordance with section 89 and 90 of the *Act*.

The Proof of Service of the Notice to End Tenancy form requires confirmation of the method of service of the 10 Day Notice. Page 2, section C of Residential Tenancy Policy Guideline #39 Direct Requests sets out the following requirements for the landlord in order to provide clear proof of service of the 10 Day Notice when attaching it to a tenant's door:

Signed witness statement **confirming the name of the person who served the document(s)** by attaching a copy to the door, what document(s) they served, the date and time of service and the name of the person the documents were addressed to.

The Proof of Service of the Notice to End Tenancy form submitted by the landlord does not state the name of the person serving the notice – only the company name is noted. Further, the printed name of the witness is not provided on the form. The signature of the witness is provided, but it is not legible.

On the Proof of Service of the Notice of Direct Request Proceeding, the landlord has indicated that the Notice of Direct Request Proceeding was sent to the tenant by registered mail. The landlord has not provided a copy of the Canada Post registered mail customer receipt containing the tracking number to confirm this mailing. As such, I find that the landlord has not met the requirements for proof of service as explained on page 13, in section 15 of Residential Tenancy Policy Guideline #12 Service Provisions, which states:

**15. PROOF OF SERVICE**

Proof of service by Registered Mail should include the **original Canada Post Registered Mail receipt containing the date of service, the address of service**, and that the address of service was the person's residence at the time of service, or the landlord's place of conducting business as a landlord at the time of service as well as a copy of the printed tracking report.

Due to these deficiencies in the documentary evidence provided by the landlord, I am not able to confirm service of the 10 Day Notice or the Notice of Direct Request Proceeding to the tenant, which are requirements of the Direct Request Process.

Conclusion

Based on the above, I dismiss the landlord's Application for Dispute Resolution in its entirety 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: April 3, 2018

---

Residential Tenancy Branch