



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPRM-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 applicant 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 form which declares that on May 31, 2018, the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days after service.

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 June 05, 2018, the fifth day after their registered mailing.

### 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*?

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 a residential tenancy agreement;
- A Direct Request Worksheet showing the rent owing during the portion of this tenancy in question;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated May 07, 2018; and
- A copy of the Proof of Service of the Notice form.

The Notice restates section 46(4) of the Act which provides that the tenants 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 tenants did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenants did not pay the rental arrears.

### 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 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, the Notice, and all related documents with respect to the Direct Request process, in accordance with the *Act* and Policy Guidelines. 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 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.

I have reviewed all documentary evidence provided by the landlord. Section 52 of the *Act* provides the following with respect to a notice to end tenancy:

**52** In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,

- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

The Notice issued to the tenant, under the section where the tenant is given a 10-day notice to vacate the rental unit, provides an incorrect address for the rental unit, which effectively gives notice to the tenant to move out of a unit bearing an address that is not the correct address of the rental unit as established in the tenancy agreement and on the application for dispute resolution. I find this sufficiently invalidates the Notice. Therefore, I find the Notice is not in accordance with the provisions of section 52 of the *Act*, and therefore, the Notice is set aside and is of no force and effect.

As the landlord's application for an Order of Possession arises from a Notice that has been set aside, I dismiss the landlord's application for an Order of Possession, based on the May 07, 2018 Notice, without leave to reapply. If the landlord determines that unpaid rent is an outstanding concern with respect to the tenancy, it remains open to the landlord to seek remedy by issuing a Notice to End Tenancy in accordance with the criteria set out in sections 46 and 52 of *Act*, if the landlord so wishes

Based on the foregoing, I dismiss the landlord's application for a monetary Order with leave to reapply.

I also find that the evidentiary material provided by the applicant landlord brings into question whether the correct landlord is identified on the application for dispute resolution. The landlord listed on the application for dispute resolution is an individual, who will be identified as bearing the initials "CH", and is different than the entity listed as the landlord on the tenancy agreement. The landlord listed on the tenancy agreement is an entity, which, for the purpose of this decision, will be identified as bearing the initials "CB".

The tenancy agreement demonstrates that "CB" was listed on the tenancy agreement as the landlord, and that "CB" endorsed the terms of the tenancy agreement to enter into a tenancy agreement with the tenant identified on the tenancy agreement and on the application for dispute resolution.

I find that the applicant landlord has not demonstrated whether the landlord listed on the application form, "CH", inherited the tenancy agreement from the landlord listed on the tenancy agreement, or whether the applicant "CH" has authorization to act as an agent for the landlord listed on the tenancy agreement. I further find that the applicant "CH" has not demonstrated that he entered into a tenancy agreement with the individual identified as the respondent tenant on the application for dispute resolution.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I dismiss the applicant landlord's application for an Order of Possession, based on the May 07, 2018 Notice, without leave to reapply.

The 10 Day Notice of May 07, 2018 is cancelled and is of no force or effect.

I dismiss the landlord's application for a monetary Order with leave to reapply.

I dismiss the landlord's application to recover the 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: June 04, 2018

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Residential Tenancy Branch