



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR-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 (the Application) 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 June 19, 2018, the landlord personally served the tenant the Notice of Direct Request Proceeding. The landlord had the tenant and a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm personal service. Based on the written submission of the landlord and in accordance with section 89 of the *Act*, I find that the tenant has been duly served with the Direct Request Proceeding documents on June 19, 2018, the day it was personally served to them.

### 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 states in their Application that the tenant has moved to a different rental unit in May 2018 and is no longer living in the rental unit under dispute.

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on November 08, 2017, indicating a monthly rent of \$367.00, due on the first day of each month for a tenancy commencing on December 01, 2017;

- A second copy of a residential tenancy agreement, for a different rental unit, which was signed by a different landlord and the tenant on April 30, 2018, for a tenancy commencing on May 01, 2018;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) June 04, 2018, for \$1,382.83 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 June 15, 2018;
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was left with an adult who apparently resides with the tenant on June 04, 2018; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

### 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 of 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 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.

I find that the adult who is in the rental unit is no longer residing with the tenant as the tenant has moved to a different rental unit, based on the landlord's statement in their Application and the second tenancy agreement signed by the tenant, which commenced on May 01, 2018, prior to service of the 10 Day Notice to the adult.

Based on the above, I find that the landlord has not served the 10 Day Notice to an adult who resides with the tenant as the tenant is no longer residing in the rental unit,

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

Therefore, I dismiss the landlord's application to end this tenancy and obtain an Order of Possession on the basis of the 10 Day Notice dated June 04, 2018, without leave to reapply.

The 10 Day Notice dated June 04, 2018, is cancelled and of no force or effect.

### Conclusion

The landlord's Application for an Order of Possession on the basis of the 10 Day Notice dated June 04, 2018, is dismissed, without leave to reapply.

The 10 Day Notice dated June 04, 2018, is cancelled and of no force or effect.

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 22, 2018

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Residential Tenancy Branch