



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR-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 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 July 23, 2018, the landlord served the tenant “CR” with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The personal service was confirmed as the tenant acknowledged receipt of the Notice of Direct Request Proceeding by signing the Proof of Service form. The Proof of Service form also establishes that the service was witnessed by “TZ” and a signature for “TZ” is included on the form.

Based on the written submissions of the landlord, and in accordance with section 89 of the *Act*, I find that the tenant “CR” has been duly served with the Direct Request Proceeding documents on July 23, 2018.

I have reviewed all documentary evidence provided by the landlord. Section 89 of the *Act* provides the approved methods by which documents comprising an application for dispute resolution can be served. Section 89 provides, in part, as follows:

### **Special rules for certain documents**

**89** (2) An application by a landlord under section 55 [*order of possession for the landlord*], 56 [*application for order ending tenancy early*] or 56.1 [*order of possession: tenancy frustrated*] must be given to the tenant in one of the following ways:

(d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;

On the Proof of Service of the Notice of Direct Request Proceeding form for the tenant "SR", the landlord contends that service of the documents was carried out in a manner consistent with the provisions of section 89 of *Act*, as they were attached to a noticeable place at the address at which the tenant resides. The landlord provided a hand-written statement on the form which demonstrates that the documents were served by way of sliding the hearing documents under the door of the rental unit.

The information provided by the landlord with respect to the manner in which the hearing documents were served demonstrates that the documents were not attached or affixed to the door, nor were they attached to a noticeable place, as required under the service provisions of the *Act*, but were instead slid under the door of the rental unit. The landlord has not provided any further details to demonstrate that the documents were **attached to a noticeable place** [emphasis added]. Rather, the landlord has provided a statement which does not demonstrate that they were attached, as required under the provisions of section 89(2) of the *Act*. Instead, the landlord's statement demonstrates that the documents were slid under the door, which is not a method of service permitted under section 89 of *Act*.

Therefore, I find that the landlord has not served the hearing documents to the tenant "SR" in a manner approved by the *Act*, by attaching them to the door or other conspicuous place, as provided under section 89(2) of the *Act*.

I further find that there is no evidence before me that establishes that the landlord was given leave to serve the Direct Request Proceeding documents in an alternate fashion as ordered by a delegate of the director of the Residential Tenancy Branch in accordance with sections 89(1)(e) or 89(2)(e) of the *Act*.

Based on the foregoing, I find that the landlord has not served the Notice of Direct Request Proceeding containing a copy of the application for dispute resolution to the tenant "SR" in accordance with the *Act*. Therefore, I dismiss the landlord's application against the tenant "SR" with leave to reapply. I will hear the landlord's application against tenant "CR" only.

#### 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 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 an incomplete residential tenancy agreement;
- A Direct Request Worksheet showing the rent owing and paid during the portion of this tenancy in question;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated July 08, 2018, which the landlord states was served to the tenant on July 09 2018, for \$60.00 in unpaid rent due on July 01, 2018, with a stated effective vacancy date of July 23, 2018; and
- A copy of the Proof of Service of the Notice asserting that the landlord served the Notice to the tenants by way of posting it to the door of the rental unit on July 09, 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 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 88 of the *Act* provides the approved methods by which documents can be served. Section 88 reads, in part, as follows:

**88** All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;

- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];

On the first page of the Proof of Service of the Notice form, the landlord's agent has checked a box indicating that the Notice was attached to the door. However, the landlord's agent also states, under the "special details" section, that the Notice was inserted under the door of the rental unit, which suggests that instead of attaching the Notice to the door of the rental unit, the Notice was slid under the door of the rental unit.

I find that, by serving the Notice by way of leaving it under the door of the rental unit, the landlord's agent has not served the Notice in a manner consistent with the service provisions for documents as provided under section 88 of the *Act*. I further find that there is no evidence before me that establishes that the landlord was given leave to serve the Notice in an alternative fashion as ordered by a delegate of the director of the Residential Tenancy Branch in accordance with section 88(i) of the *Act*.

Based on the foregoing, I find that the landlord has not demonstrated that the Notice was properly served in accordance with 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 to End Tenancy that has been set aside, I dismiss the landlord's application for an Order of Possession, based on the July 08, 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.

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 landlord's application for an Order of Possession, based on the July 08, 2018 Notice, without leave to reapply.

The 10 Day Notice of July 08, 2018, is cancelled and is of no force or effect.

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: July 26, 2018

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Residential Tenancy Branch