



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            OPR-DR

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 form which declares that on November 16, 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 November 21, 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?

### Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement dated March 3, 2015 between the tenant and a corporate entity which is not the applicant, indicating a monthly rent of \$725.00, due on the first day of each month. It is silent as to when the tenancy commences;
- A Direct Request Worksheet showing the rent owing and paid during the portion of this tenancy in question, on which the landlord sets out its basis for an order of possession for outstanding rent in the amount of \$960.00, comprised of the balance of unpaid rent due by October 1, 2018 ;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the “**Notice**”) dated October 13, 2018, which the landlord states was served to the tenant on October 13, 2018, for

\$960.00 in unpaid rent due on October 1, 2018 , with a stated effective vacancy date of October 24, 2018 ; and

- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenant by way of posting it to the door of the rental unit on October 13, 2018 . The Proof of Service form states that the service of the Notice was witnessed and a name and signature for the witness are included on the form.

The Notice restates section 46(4) of the Act which provides that the tenant 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.

### 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.

The onus is on the landlord to present evidentiary material that 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. I find that the following deficiencies in the materials exist:

- 1) On the proof of service of the Notice form, the witness "JC" attests that she observed *herself* serving the Notice, rather than the individual ("CC") the form indicates served the Notice.
- 2) The landlord's name on the tenancy agreement does not match the landlord's name on the Application for Dispute Resolution, 10 Day Notice or any of the other documentation that has been submitted with the Application for Dispute Resolution. The landlord has provided no explanation for this.
- 3) On the direct request worksheet, the landlord sets out that:
  - a. rent in the amount of \$960.00 was owing as of October 1, 2018;
  - b. the tenant made a partial payment of \$500.00 on November 7, 2018; and
  - c. the balance of rent owed remains \$960.00.

No explanation was given for why the \$500.00 was not credited towards the amount due. I am left only to speculate as to what the \$500.00 payment represents. It may be that this payment represents a partial payment of November 2018 rent. It is not clear.

- 4) The tenancy agreement sets out rent as \$725.00 per month. The direct request worksheet appears to indicate that monthly rent is now \$960.00. The landlord has

provided no evidence supporting an increase in rent. It may be that the \$960.00 owed represent rental arrears in addition to October 2018 rent. It is not clear.

As this is an *ex parte* proceeding that does not allow for any clarification of the facts, I have to be satisfied with the documentation presented.

I find that the discrepancy on the Notice is an oversight on the part of the landlord, and not fatal to question of proper service of the Notice. The proof of service form indicates the identity of the individual who served the Notice. In light of this, I find it unlikely that "JC" would have intentionally attested that she observed herself serving the Notice. Accordingly, I find that the Notice was properly served.

The remaining discrepancies, however, are not resolved so easily. The evidence before me has too many gaps, and leaves too many questions unanswered.

Accordingly, I dismiss the landlord's application with leave to reapply.

#### Conclusion

The landlord's application for an Order of Possession 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: November 22, 2018

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Residential Tenancy Branch