



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **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 that on November 22, 2018, the landlords served the tenant by personally handing the Notice of Direct Request Proceeding to Person A.B. The landlord had a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm this 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*?

### 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 landlords 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.

In this type of matter, the landlords must prove they served the tenant with the Notice of Direct Request proceeding with all the required inclusions as indicated on the Notice of Direct Request proceeding as per subsections 89 (1) and (2) of the *Act* which permit service by “leaving a copy at the tenant’s residence with an adult who apparently resides with the tenant.”

I find that landlords have not established that the individual identified as “A.B.” is an adult or that “A.B.” is a person who apparently resides with tenant. As such, I do not find that landlord has established that it is has served the tenant with the Notice of Direct Request Proceeding in accordance with section 89 of the *Act*.

Since I find that the landlords have not served the tenant with notice of this application in accordance with Section 89 of the *Act*, I dismiss the landlords’ application for an Order of Possession and a Monetary Order for unpaid rent with leave to reapply.

### Conclusion

The landlords’ application for an Order of Possession and a Monetary Order for unpaid rent 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 28, 2018

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Residential Tenancy Branch