



# 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 landlord for an Order of Possession based on unpaid rent and a monetary Order.

The landlord submitted four signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on August 29, 2019, the landlord served each of the above-named tenants with the Notice of Direct Request Proceeding via registered mail. The landlord provided four copies of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. 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 tenants have been deemed served with the Direct Request Proceeding documents on September 03, 2019, 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

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The landlord submitted, in part, the following evidentiary material:

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated August 08, 2019;
- A copy of a Proof of Service of the Notice form asserting that the landlord served the Notice to the tenants by way of leaving a copy in the mailbox or mail slot at the tenant's residence on August 08, 2019; and
- A copy of a second Proof of Service of the Notice form asserting that the landlord served the Notice to the tenants by way of leaving a copy of the Notice with the tenants "AH" and "CP". The form also asserts that the landlord served the Notice to the tenants via fax and by way of email to the tenant "AH".

## 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*];

As part of an application for dispute resolution by Direct Request, a landlord must provide a Proof of Service of the Notice to End Tenancy form to confirm that the Notice to End Tenancy was served in accordance with the Act.

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 served to the tenants via fax. However, the landlord has not provided any additional evidence—such as a fax confirmation page to prove that the Notice was faxed to the tenants' fax number provided for service—to demonstrate that the Notice was served in this manner. Additionally, on the second page of the Proof of Service of the Notice to End Tenancy form, under the section titled "Witness Statement", the form does not include the name or signature of a witness to

confirm that the service of the Notice was carried out as attested by the landlord's agent in the presence of a witness.

Therefore, I find that the landlord has not proven that the Notice was served to the tenants via fax.

On the same Proof of Service of the Notice form, the landlord has asserted that the Notice was left with the tenants "AH" and "CP". If service of the Notice was completed in this manner, the landlord must provide proof to confirm service of the Notice to End Tenancy, such as the name and signature of a witness to demonstrate that service of the Notice was witnessed, or by having one of the tenants provide a signature on the Proof of Service of the Notice to End Tenancy form to acknowledge receipt of the Notice.

On the second page of the Proof of Service of the Notice to End Tenancy form, under the section titled "Witness Statement", the form does not include the name or signature of a witness to confirm that the service of the Notice was carried out as attested by the landlord's agent in the presence of a witness.

Furthermore, the Proof of Service of the Notice to End Tenancy form does not include a signature of either tenant being served to demonstrate that the tenants acknowledged receipt of the Notice.

The landlord is required to provide a completed Proof of Service of the Notice to End Tenancy form which includes either the name and signature of a witness, or acknowledgment by the tenants, to confirm that the Notice to End Tenancy was served in accordance with the Act. I find that the landlord has not demonstrated that service of the Notice to End Tenancy was witnessed and completed in accordance with the Act, nor has the landlord provided the name and signature of a witness on the Proof of Service of the Notice to End Tenancy form, as is required within the Direct Request process.

Therefore, I find that the landlord has not proven that the Notice was personally served to the tenants by way of leaving a copy of the Notice with the tenants.

The landlord has also stated that the Notice was served via email to the tenant "AH". However, service of a Notice to End Tenancy is not a method of service permitted under the Act. I find that, by serving the Notice by way of email, the landlord 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 I cannot determine that the tenants have been served with the Notice via email, as service via email is not an approved method of service under the *Act*.

On a separate Proof of Service of the Notice to End Tenancy form, the landlord has asserted that the Notice was served to the tenants by way of leaving a copy in the mailbox or mail slot at the tenant's residence.

On the first page of the Proof of Service of the Notice to End Tenancy form, the landlord has checked a box indicating that the Notice to End Tenancy was served to the tenants by way of leaving a copy in the mailbox or mail slot at the tenants' residence. If service of the Notice was completed in this manner, the landlord must provide proof to confirm service of the Notice to End Tenancy, such as the name and signature of a witness to demonstrate that service of the Notice was witnessed. The person serving the Notice must also provide their name and signature on the second page of the Proof of Service of the Notice to End Tenancy form, under the section titled "signature", as doing so permits the person to attest to having served the Notice in accordance with the Act, as detailed in the earlier sections of the Proof of Service of the Notice to End Tenancy form.

On the second page of the Proof of Service of the Notice to End Tenancy form, under the section titled "Witness Statement", the form does include the name of a witness bearing the initials "KB", however KB has not provided a signature to demonstrate that the service of the Notice was witnessed.

I find that the landlord is required to provide a completed Proof of Service of the Notice to End Tenancy form which includes the name and signature of the person who asserts that the Notice to End Tenancy was served in accordance with the Act. I find that the form submitted by the landlord, on the second page of the form in the field where service of the Notice to End Tenancy is to be confirmed, does not include the name and signature of the individual who may have served the Notice.

The Proof of Service of the Notice to End Tenancy form provided by the landlord does not include a name and signature of the person who served the Notice, which is a requirement of the Direct Request process.

I find that the landlord has not proven that service of the Notice to End Tenancy was completed in accordance with the Act, as the landlord has not provided a completed Proof of Service of the Notice to End Tenancy form which includes the name and signature of the person serving the Notice, as required under the provisions of the Direct Request process outlined in Policy Guideline #39. Based on the evidentiary material provided by the landlord, I find that I am not able to confirm service of the Notice to End Tenancy to the tenant, which is a requirement of the Direct Request process.

As previously indicated, in an ex parte Direct Request Proceeding, the onus is on the applicant 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. I find

that there are deficiencies with this application, as outlined above, which cannot be clarified by way of the Direct Request Proceeding. These deficiencies cannot be remedied by inferences in the absence of more evidentiary material, or oral testimony, which may clarify the questions raised by these inconsistencies.

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

It remains open to the landlord to reapply for dispute resolution via the Direct Request process if all requirements for an application for dispute resolution via Direct Request, as outlined in Policy Guideline #39, can be met, or, in the alternative, the landlord may wish to submit an application for dispute resolution to be heard via a participatory hearing.

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 with leave to reapply.

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

I dismiss the landlord's request to recover the \$100.00 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: September 06, 2019

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Residential Tenancy Branch