



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR-DR, 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 a signed Proof of Service Notice of Direct Request Proceeding which declares that on September 21, 2020, the landlord posted the Notice of Direct Request Proceeding to the door of the rental unit.

The landlord submitted a copy of a Canada Post Customer Receipt containing a Tracking Number to confirm a package was sent by registered mail on October 2, 2020.

### 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*?

### Analysis

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 that such evidentiary material 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 landlord must prove they served the tenant with the Notice of Direct Request Proceeding with all the required inclusions as indicated on the Notice as per section 89 of the *Act*. Policy Guideline #39 on Direct Requests provides the following requirements:

*“After the Notice of Dispute Resolution Proceeding Package has been served to the tenant(s), the landlord must complete and submit to the Residential Tenancy Branch a Proof of Service Notice of Direct Request Proceeding (form RTB-44) for each tenant served.”*

The landlord submitted a copy of a Proof of Service Notice of Direct Request Proceeding indicating the landlord posted the Notice of Direct Request Proceeding to the door of the rental unit on September 21, 2020. However, I find that the landlord did not apply for the Direct Request Proceeding until September 30, 2020.

For this reason, I find I cannot confirm service of the Notice of Direct Request Proceeding documents by attaching them to the tenant’s door.

I also note that the landlord submitted a copy of a Canada Post Customer Receipt containing a Tracking Number to confirm a package was sent on October 2, 2020. However, the landlord has not provided a copy of a Proof of Service Notice of Direct Request Proceeding form in support of the registered mailing, which is a requirement of the Direct Request process as detailed in Policy Guideline #39.

For this reason, I find I cannot confirm service of the Notice of Direct Request Proceeding documents by registered mail.

As I am not able to confirm service of the Notice of Direct Request Proceeding to the tenant, the landlord’s application for an Order of Possession and a Monetary Order for unpaid rent is dismissed with leave to reapply.

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 and a Monetary Order for unpaid rent with leave to reapply.

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: October 22, 2020

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Residential Tenancy Branch