



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding DELANEY PROPERTIES LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR

### 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 May 9, 2017, the landlord personally served Tenant A.B. the Notice of Direct Request Proceeding. The landlord had a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm personal service. Based on the written submission of the landlord and in accordance with section 89 of the *Act*, I find that Tenant A.B. has been duly served with the Direct Request Proceeding documents on May 9, 2017.

The landlord submitted a second signed Proof of Service of the Notice of Direct Request Proceeding which declares that on May 9, 2017, the landlord sent Tenant K.H. the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that Tenant K.H. has been deemed served with the Direct Request Proceeding documents on May 14, 2017, 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 the Proofs of Service of the Notices of Direct Request Proceeding served to the tenants;
- A copy of a residential tenancy agreement which was signed by the landlord and the tenants on April 27, 2016, indicating a monthly rent of \$1,500.00, due on the first day of the month for a tenancy commencing on May 1, 2016;
- A copy of a Notice of Rent Increase form showing the rent being increased from \$1,500.00 to the current monthly rent amount of \$1,555.00;
- A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated May 3, 2017, and personally served to an adult who resides with the tenants on May 3, 2017, with a stated effective vacancy date of May 13, 2017, for \$805.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was personally served to an adult who resides with the tenants at 2:08 (a.m. or p.m. not indicated) on May 3, 2017. The 10 Day Notice states that the tenants had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end.

### Analysis

I have reviewed all documentary evidence and in accordance with section 88 of the *Act*, I find that the tenants were duly served with the 10 Day Notice on May 3, 2017.

Section 46 (4) of the *Act* states that, within five days of a tenant receiving the 10 Day Notice, the tenant may either pay the rent or dispute the 10 Day Notice.

I find that the fifth day for the tenants to have either paid the rent or disputed the notice is May 8, 2017. I further find that the landlord applied for dispute resolution on May 8, 2017, the last day that the tenants had to dispute the 10 Day Notice.

The earliest date that the landlord could have applied for dispute resolution is May 9, 2017, meaning that the landlord made their application for dispute resolution one day too early.

Therefore, I dismiss the landlord's application to end this tenancy and obtain an Order of Possession on the basis of the 10 Day Notice of May 3, 2017, with leave to reapply. For the same reasons identified in the 10 Day Notice, I dismiss the landlord's application for a Monetary Order with leave to reapply.

Conclusion

The landlord's application for an Order of Possession on the basis of the 10 Day Notice of May 3, 2017 is dismissed, with leave to reapply.

I dismiss the landlord's application for a Monetary Order 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: May 16, 2017

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Residential Tenancy Branch