



# 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 two signed Proofs of Service of the Notices of Direct Request Proceeding which declare that on November 10, 2017, the landlord sent each of the tenants the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenants are deemed to have been served with the Direct Request Proceeding documents on November 15, 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*?

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

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenants on July 24, 2017, indicating a monthly rent of \$938.00, due on the first business day of each month for a tenancy commencing on August 1, 2017;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated October 6, 2017 for \$958.00 in unpaid rent (the 10 Day Notice). The 10 Day Notice provides 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 on the stated effective vacancy date of October 20, 2017;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that a 10 Day Notice was posted to the door of persons who are not the respondents on September 12, 2017; and
- A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

### 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 that they served the tenants with the 10 Day Notice in a manner that is considered necessary as per Sections 71(2) (a) and 88 of the *Act*. Residential Tenancy Policy Guideline # 39 contains the details about the key elements that need to be considered when making an application for Direct Request.

### **PROOF OF SERVICE**

#### **10-Day Notice to End Tenancy**

The landlord must prove the tenant was served with the 10-Day Notice to End Tenancy. A landlord must serve the tenant with a 10-Day Notice to End Tenancy by:

- registered mail;
- in person, with a witness verifying it was served; or
- **by posting it on the tenant's door or in an equally conspicuous place, with a witness verifying it was served.**

Proof of service of the 10 Day Notice to End Tenancy may take the form of:  
registered mail receipt and printed tracking report;  
a receipt signed by the tenant, stating they took hand delivery of the document(s); or  
**a witness statement that they saw the landlord deliver the document(s).**

The Proof of Service Notice to End Tenancy indicates the 10 Day Notice was served to persons who are not the respondents. I also note that the address of the rental unit of the Proof of Service Notice to End Tenancy is not the address of the rental unit for the tenants in all other documents submitted with the application. Finally, the Proof of Service Notice to End Tenancy form provides that the 10 Day Notice was served on September 12, 2017, before the 10 Day Notice of October 6, 2017 had been issued.

As I am not able to confirm service of the 10 Day Notice to the tenants, which is a requirement of the Direct Request proceeding, the landlord's application for an Order of Possession and a Monetary Order 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: November 15, 2017

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Residential Tenancy Branch