



# 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 one signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 19, 2017, the landlord posted the Notice of Direct Request Proceeding to the door of the rental unit.

### 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*?

### 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 December 02, 2016, indicating a monthly rent of \$1,800.00, due on the first day of each month for a tenancy commencing on December 03, 2016;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated November 03, 2017 (the “Notice”), with a stated effective vacancy date of November 14, 2017, for \$3,600.00 in unpaid rent. The 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;

- A copy of a Proof of Service Notice to End Tenancy form which indicates that the Notice was left in the tenants' mail box or mail slot at 7:00 p.m. on November 03, 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.

The landlord must prove that they served each tenant with the Notice of Direct Request in a manner that is considered necessary as per section 71(2) (a) of the *Act*. On the top of the Proof of Service of the Notice of Direct Request Proceeding, the wording reads as follows: ``You must serve these documents to each respondent individually....``

I find that the Proof of Service Notice of Direct Request Proceeding sets out both names of the tenants. As this is a Direct Request process that does not allow me to clarify certain facts, I can only determine that the landlord has served both tenants with the same Notice of Direct Request Proceeding package by posting one copy to the door of the rental unit. As such, the Notice was not served in accordance with the Direct Request process, as the tenants were not served separately. Accordingly, I dismiss the landlord's application for an Order of Possession and Monetary Order based on the 10 Day Notice with leave to reapply.

Of note, had I been able to confirm service of the Notice of Proceeding by Direct Request process was posted to the door of the rental unit, the landlord would not have been allowed to make a monetary claim in this application in accordance with section 89(2) of the *Act*.

Lastly, I note that on the second page of the Proof of Service Notice to End Tenancy, the date the witness stated they saw the 10 Day Notice being served does not correspond with the information on the first page of the Proof of Service.

Conclusion

I dismiss the landlord's application for an Order of Possession based on the 10 Day Notice with leave to reapply.

I dismiss the landlord's application for a Monetary Order for unpaid rent 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 *Act*.

Dated: November 22, 2017

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Residential Tenancy Branch