



# 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 was conducted by way of Direct Request Proceeding, pursuant to Section 55(4) of the *Residential Tenancy Act (Act)* and dealt with an Application for Dispute Resolution by the applicant for an order of possession and a monetary order due to unpaid rent. A participatory hearing was not convened.

The applicant submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 26, 2018 the applicant served the respondent with the Notice of Direct Request Proceeding by posting them on the rental unit door. Section 90 of the *Act* states a document sent by mail is deemed served on the 5<sup>th</sup> day after it is mailed.

The Proof of Service of the Notice of Direct Request Proceeding indicates on it that if the applicant is seeking a monetary order they should not use the method of posting the documents on the door of the rental unit.

Section 89(1) of the *Act* stipulates:

An application for dispute resolution when required to be given to one party by another, must be given 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 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 registered mail to a forwarding address provided by the tenant;

(e) as ordered by the director under section 71 (1) *[director's orders: delivery and service of documents]*.

Section 89(2) states:

An application by a landlord under section 55 *[order of possession for the landlord]*, 56 *[application for order ending tenancy early]* or 56.1 *[order of possession: tenancy frustrated]* must be given to the tenant in one of the following ways:

- (a) by leaving a copy with the tenant;
- (b) by sending a copy by registered mail to the address at which the tenant resides;
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;
- (e) as ordered by the director under section 71 (1) *[director's orders: delivery and service of documents]*.

Section 89(2)(d) specifically allows for a landlord seeking an order of possession to post the proceeding documents on the door of the rental unit. However, since the monetary order is not an order of possession Section 89(1) applies the allowed methods of service for the monetary claim. Under Section 89(1) there is no provision for a party to post the notice on the door.

Based on the written submissions of the applicant, I find that for the purposes of adjudicating the applicant's entitled to an order of possession, the respondent has been sufficiently served with the Dispute Resolution Direct Request Proceeding documents pursuant to the *Act*.

However, as the applicant posted the Notice of Direct Request Proceeding to the door, I find the respondent has not been sufficiently served with the required documents, as the applicant failed to serve them using a method not allowed under Section 89(1) of the *Act*.

As such, I amend the applicant's Application for Dispute Resolution to exclude the request for a monetary order.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent and to a monetary order to recover the filing fee for the cost of this Application for Dispute Resolution, pursuant to Sections 46, 55, 67, and 72 of the Act.

### Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the respondent and another party with the initials VG. on July 14, 2018 for a six-month fixed term tenancy beginning on July 15, 2018 for the monthly rent of \$1,100.00 due on the 1<sup>st</sup> of each month and a security deposit of \$550.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on November 9, 2018 with an effective vacancy date of November 20, 2018 due to \$370.00 in unpaid rent.

Documentary evidence filed by the applicant indicates the respondent failed to pay the full rent owed for the month of November 2018 and that the respondent was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting it to the rental unit door on November 9, 2018 at 1:30 p.m. and that this service was witnessed by a third party.

The Notice states the respondent had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The respondent did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days.

The applicant did not provide any evidence that the landlord had changed from that individual named on the tenancy agreement or that they had a service agreement with the original landlord of the residential property.

### Analysis

Direct Request proceedings are conducted when a landlord issues a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and the tenant(s) has not filed an Application for Dispute Resolution seeking to cancel the Notice within 5 days of receiving the Notice. The proceeding is conducted *ex parte* and based solely on the paperwork provided by the applicant landlord.

Because the hearing is conducted without the benefit of having a participatory hearing in which I might question either of the parties if something is unclear in the paperwork, all documents submitted must be complete and clear.

As the applicant has provided absolutely no evidence that they have authority to act on behalf of the landlord named in the tenancy agreement, I find the applicant has failed to establish they are a party to this tenancy.

### Conclusion

As I am not able to determine if the applicant is a party to this tenancy, I dismiss this application for want of jurisdiction.

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: December 03, 2018

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Residential Tenancy Branch