



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes OPU-DR, MNU-DR, FFL

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 filed by the Landlord for an order of possession and a monetary order for unpaid rent and/or utilities and to recover the filing fee.

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.

Policy Guideline #39 confirms that a “landlord must serve a Notice of Dispute Resolution Proceeding Package to each tenant on the tenancy agreement within three days of the Notice of Dispute Resolution Proceeding being made available by the Residential Tenancy Branch” (emphasis added).

In this case, the Landlord submitted a Proof of Service Notice of Direct Request Proceeding (the Proof of Service) which declares that the Landlord served the Tenants with a Notice of Dispute Resolution Proceeding package in person on November 25, 2021. However, a note on the Proof of Service states: “they refused to open the door and we left in mailbox”. Service in this manner was witnessed by F.J. Only one Proof of Service document was submitted.

Further, as noted above, the Proof of Service indicates that the Notice of Dispute Resolution Proceeding package was served by leaving a copy in the Tenants' mailbox. However, read as a whole, section 89 of the Act confirms that a Notice of Dispute Resolution Proceeding package cannot be served in this manner when seeking a monetary order.

I find the above evidence gives rise to issues that cannot be resolved in a Direct Request Proceeding. Specifically, I find I am not satisfied the Notice of Dispute Resolution Proceeding package was served in accordance with the Act and Policy Guideline #39.

I order that the Landlord's requests for an order of possession and a monetary order for unpaid rent and/or utilities are dismissed with leave to reapply.

As the Landlord has not been successful, I order that the Landlord's request for an order granting recovery of the filing fee is dismissed 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: January 5, 2022

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Residential Tenancy Branch