

**39. Direct Requests**Sept-17

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This policy guideline is intended to help the parties to an application understand issues that are likely to be relevant. It may also help parties know what information or evidence is likely to assist them in supporting their position. This policy guideline may be revised and new guidelines issued from time to time.

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This policy guideline addresses:

- the legislative framework for the direct request process;
- the key elements to be taken into account when considering a direct request; and
- the possible outcomes.

**A. LEGISLATIVE FRAMEWORK**

The *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act*<sup>1</sup> (the Legislation) allow a decision and orders to be made based on written submissions only, without a hearing taking place. This is referred to as the “direct request” process.

The Legislation limits the direct request process to applications for orders of possession and monetary orders for unpaid rent and recovery of the filing fee associated with applying for a direct request.

The Legislation<sup>2</sup> allows a landlord to treat unpaid utility charges as unpaid rent if the tenancy agreement requires the tenant to pay utility charges to the landlord and the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them.

This process is only available if the tenant does not dispute the *10 Day Notice to End Tenancy for Unpaid Rent or Utilities* and does not pay all rent and utilities owing within five days of receiving the notice.

Requests to keep the security deposit or pet damage deposit, or for compensation for damages, are only considered through the conventional dispute resolution process.

**B. ONUS ON THE LANDLORD**

When making an application for dispute resolution through the direct request process, the landlord must provide copies of:

- the written tenancy agreement;
- documents showing changes to the tenancy agreement or tenancy, such as rent increases, or changes to parties or their agents;
- the *Direct Request Worksheet* (form RTB-46) setting out the amount of rent or utilities owing which may be accompanied by supporting documents such as a rent ledger or receipt book;

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<sup>1</sup> *Residential Tenancy Act* (RTA), s. 55(4); *Manufactured Home Park Tenancy Act* (MHPTA), s. 48(4).

<sup>2</sup> RTA, s. 46(6); MHPTA, s. 39(6).

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- the *10 Day Notice to End Tenancy for Unpaid Rent or Utilities* (this is often considered proof that the tenant did not pay rent); and,
  - proof that the landlord served the tenant with the *10 Day Notice to End Tenancy for Unpaid Rent or Utilities* and, if applicable, the *Written Demand to Pay Utilities*.

**C. PROOF OF SERVICE****C.1. 10 DAY NOTICE TO END TENANCY**

The landlord must prove the tenant was served with the *10 Day Notice to End Tenancy for Unpaid Rent or Utilities* (form RTB-30). A *Proof of Service Notice to End Tenancy and Written Demand to Pay Utilities* (form RTB-34) can be used for this purpose.

Because the tenant does not have an opportunity to present evidence on the issues in a direct request proceeding, it is essential that the landlord provide substantive proof of service.

While a landlord may use any method of service allowed under the Legislation<sup>3</sup> to serve the tenant with a *10 Day Notice to End Tenancy for Unpaid Rent or Utilities*, if the landlord cannot provide clear proof of service, the director's delegate ("the director") may dismiss the application with or without leave to reapply or adjourn it to be reconvened as a participatory hearing.

The tables below set out the preferred methods of service, as well as the additional methods of service allowed under the Legislation. The preferred methods can be proven and are the least likely to result in a finding that the landlord has failed to provide clear proof of service.

The Legislation establishes that a document not served personally, is deemed to be received a specified number of days after service<sup>4</sup>.

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<sup>3</sup>*Residential Tenancy Act (RTA)*, s. 88; *Manufactured Home Park Tenancy Act (MHPTA)*, s. 81.

<sup>4</sup> RTA, s. 90; MHPTA, s. 83.

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**Preferred methods of service**

<b>Method of service</b>	<b>Proof of Service</b>
Sending by registered mail	Canada Post Registered Mail receipt showing the date and time of purchase and printed tracking report
Leaving a copy with the tenant in person	Hand-delivery receipt completed and signed by the tenant who received the document(s) stating what document(s) they received by hand, the date and time of service and the name of the person who served the document(s)  or  Signed witness statement confirming the name of the person who served the document(s) by hand-delivering them to the tenant, what document(s) they served, the date and time of service and the name of the person the documents were served to
Leaving a copy in the tenant's mailbox or mail slot	Signed witness statement confirming the name of the person who served the document(s) by leaving them in the mailbox or mail slot, what document(s) they served, the date and time of service and the name of the person the documents were addressed to
Attaching a copy to the tenant's door	Signed witness statement confirming the name of the person who served the document(s) by attaching a copy to the door, what document(s) they served, the date and time of service and the name of the person the documents were addressed to

**Additional methods of service**

<b>Method of service</b>	<b>Proof of Service</b>	<b>Comments</b>
Attaching a copy to a conspicuous place at the address where the tenant resides	Signed witness statement confirming the name of the person who served the document(s) by attaching a copy to a conspicuous place, what document(s) they served, the date and time of service and the name of the person the documents were addressed to	Should include a description of the conspicuous place
Leaving a copy with an adult who apparently resides with the tenant	Hand-delivery receipt completed and signed by the person who received the document(s) confirming that the person is an adult and resides with the tenant and stating what document(s) the person received by hand, the date and time of service and the name of the person who served the document(s)	

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	or Signed witness statement confirming the name of the person who served the document(s) by hand-delivering them to an adult who apparently resides with the tenant, what document(s) they served, the date and time of service and the name of the person the documents were served to	Should include information on how the person serving the document(s) knows the person receiving the document(s) is an adult and resides with the tenant
Faxing a copy to the fax number provided by the tenant as an address for service	Fax confirmation page	Not a preferred method of service  Should include verification that the fax number served is the tenant's current fax number for service
Sending by ordinary mail	Service by ordinary mail cannot be confirmed	Not a preferred method of service

**C.2. DEMAND FOR PAYMENT OF UTILITIES**

The landlord must prove service on the tenant of the written demand for payment of utilities. A *Proof of Service Notice to End Tenancy and Written Demand to Pay Utilities* (form RTB-34) can be used for this purpose. The preferred and additional methods of service described above can be used for that purpose.

The demand letter must include copies of the utility bills.

The demand letter must be received by the tenant at least 30 days before issuing the *10 Day Notice to End Tenancy for Unpaid Rent or Utilities*.

**C.3. NOTICE OF DISPUTE RESOLUTION PROCEEDING**

The 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.

The Notice of Dispute Resolution Proceeding Package served on the tenant(s) must include:

- the *Notice of Dispute Resolution Proceeding* which includes the Application for Dispute Resolution;

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- the *10 Day Notice to End Tenancy for Unpaid Rent or Utilities* (form RTB-30);
  - the written tenancy agreement;
  - any written demand to pay utilities, if applicable;
  - the *Proof of Service Notice to End Tenancy and Written Demand to Pay Utilities* (form RTB-34);
  - the *Direct Request Worksheet* (form RTB-46); and
  - any evidence submitted with the application.

The Notice of Dispute Resolution Proceeding Package may only be served<sup>5</sup> to the tenant:

- by registered mail;
- in person;
- by posting it on the tenant's door or in an equally conspicuous place. (Note: this method cannot be used if the application includes a request for a monetary order); or
- by leaving a copy with an adult who apparently resides with the tenant. (Note: this method cannot be used if the application includes a request for a monetary order).

After the Notice of Dispute Resolution Proceeding Package has been served to the tenant(s), the landlord must complete and submit to the Residential Tenancy Branch a *Proof of Service Notice of Direct Request Proceeding* (form RTB-44) for each tenant served. The landlord may prove service of one of these methods of service as described in the table above.

This form is provided by the Residential Tenancy Branch with the *Notice of Dispute Resolution Proceeding* and may be used to obtain signatures from those receiving the package and/or from witnesses to the service of the package. Where appropriate, a registered mail receipt and tracking form may be attached to the *Proof of Service Notice of Direct Request Proceeding* form.

Documents served under the direct request process are deemed to be received based on the timelines established by the Legislation<sup>6</sup>.

**D. POSSIBLE OUTCOMES**

The possible outcomes of a direct request proceeding are:

- order of possession because the tenant has not paid rent and/or utilities in full;
- order of possession because the tenant has not paid rent and/or utilities in full and monetary order for unpaid rent and/or utilities and recovery of the filing fee, if requested;
- adjourned, with the hearing reconvened as a participatory hearing;

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<sup>5</sup> RTA s. 89; MHPTA s. 82

<sup>6</sup> RTA s. 90; MHPTA s. 83

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- dismissed with leave to reapply; and,
  - dismissed without leave to reapply.

**D.1. ORDER OF POSSESSION**

The director may issue an order of possession when:

- the landlord has proven the tenant failed to pay the full rent and/or utilities when due; and,
- the landlord has proven the tenant failed to pay all overdue rent and/or utilities in full listed on the 10 Day Notice to End Tenancy within five days of receiving the notice; and,
- the tenant did not file an application to dispute the *10 Day Notice to End Tenancy for Unpaid Rent or Utilities* within five days of receiving the notice.

The director may issue an order of possession without an accompanying monetary order if the landlord:

- did not apply for a monetary order;
- did not prove the exact amount of rent and/or utilities that was not paid in full, but the director is satisfied that rent and/or utilities are owed; or
- applied for a monetary order but served the Notice of Dispute Resolution Proceeding Package using a method other than registered mail or personal service to the tenant(s).

**D.2. ORDER OF POSSESSION AND A MONETARY ORDER**

The director may issue an order of possession and monetary order when:

- the landlord has proven the tenant failed to pay the full rent and/or utilities when due; and,
- the landlord has proven the tenant failed to pay all overdue rent and/or utilities in full within five days of receiving the notice; and,
- the tenant did not file an application to dispute the *10 Day Notice to End Tenancy for Unpaid Rent or Utilities* within five days of receiving the notice.

**D.3. ADJOURNED, WITH THE HEARING RECONVENED AS A PARTICIPATORY HEARING**

The director may adjourn the proceeding and reconvene it as a participatory hearing when the director has questions about the evidence that are best answered through oral testimony. The director may also adjourn the proceeding and reconvene it as a participatory hearing if the director accepts a Tenant's Application for Dispute Resolution seeking more time to cancel the notice to end tenancy for unpaid rent and/or utilities once the direct request process has begun.

If a tenant files an application to dispute the notice, then the direct request process is not available to the landlord. The director will schedule a landlord's Direct Request

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application to be crossed and heard at the same hearing as the tenant's application to dispute the notice if time allows, or the landlord's application may be scheduled as a participatory hearing on its own. If the landlord issues subsequent notices for unpaid rent and requests another direct request, such applications will also be crossed to be heard at the same time as the tenant's application if time allows, or the landlord's application may be scheduled as a participatory hearing on its own.

#### D.4. DISMISSED WITH LEAVE TO REAPPLY

The director may dismiss, with leave to reapply, all or portions of an application made through the direct request process when a landlord:

- has not provided all the required documents with the application for dispute resolution;
- has not provided proof of service of the required documents; or
- has applied to retain the security deposit or pet damage deposit, or for compensation other than for the unpaid rent/utilities that are the basis of the direct request application. These other matters cannot be determined through the direct request process.

#### D.5. DISMISSED WITHOUT LEAVE TO REAPPLY

The director may dismiss, without leave to reapply, an application made through the direct request process when a landlord fails to prove their claim or the evidence indicates the landlord would not be successful in a participatory hearing.

### E. CHANGES TO POLICY GUIDELINE

Section	Change	Notes	Effective Date
Document	am	Added section numbers.	2015-10-07
A	am	Added content regarding restrictions of process.	2015-10-07
B	Am	Added requirement for Direct Request Worksheet.	2015-10-07
C.1	am	Revised content on proof of service of 10 Day Notice to End Tenancy and application to unpaid utilities.	2015-10-07
C.2	am	Added content regarding written demand to pay utilities.	2015-10-07
C.3	am	Revised to clarify timelines for serving the Notice of Direct Request Proceeding Package and requirements for proving service of the package.	2015-10-07
D.1	am	Revised for clarity.	2015-10-07
D.2	am	Revised for clarity.	2015-10-07

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A	am	Amended to allow recovery of filing fee.	2017-09-25
B	am	Amended to require written tenancy agreement and written demand to pay utilities, if applicable.	2017-09-25
C.2	am	Revised Proof of Service form name (RTB-34).	2017-09-25
C.3	Am	Amended to allow use of Proof of Service form (RTB-34) to prove service of written demand. Changed package name to Notice of Dispute Resolution Proceeding Package. Amended to require written tenancy agreement and written demand to pay utilities, if applicable.	2017-09-25
D, D.4	am	Amended to allow recovery of filing fee. Revised for clarity.	2017-09-25
D.1	am	Changed package name to Notice of Dispute Resolution Proceeding Package. Revised for clarity.	2017-09-25
D.3	am	Added content clarifying scheduling and landlord applications for subsequent notices to end tenancy.	2019-04-30

## Change notations

am = text amended or changed

del = text deleted

new = new section added