

## Dispute Codes

OPR, MNR, MNSD, FF

## Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to section 74(2)(b) of the Act, and dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession and a monetary order.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 04, 2009 the Landlord served the Tenant with the Notice of Direct Request Proceeding by registered mail. The Landlord submitted a copy of a Canada Post Receipt, with a tracking number, which indicates that the Landlord mailed these documents to the rental unit. The Canada Post Website shows that this package was mailed on March 04, 2009 and a delivery notice card was left at the rental unit on March 05, 2009.

The Landlord received the Direct Request Proceeding package on March 04, 2009 and initiated service that day. Section 90 of the Residential Tenancy Act determines that a document served by mail is deemed to have been served on the fifth day after it is mailed, which in these circumstances is March 09, 2009.

Based on the written submissions of the Landlord, I find the Tenant has been duly served with the Dispute Resolution Direct Request Proceeding documents.

## Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

## Background and Evidence

I have reviewed the following evidence that was submitted by the Landlord:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the tenant.
- A copy of a residential tenancy agreement that was signed by the parties on September 11, 2008 indicating a deposit of \$475.00 was paid on September 11, 2008
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was signed on February 24, 2009 with an effective vacancy date of March 06, 2009 for \$1,900.00 in unpaid rent due on February 15, 2009
- A note that has a signature that is similar to the Tenant's signature on the tenancy agreement, which indicates that the Tenant received a 10 Day Notice to End Tenancy for Unpaid Rent on February 25, 2009

Notations on the Application for Dispute Resolution filed by the Landlord indicates that the Tenant was personally served with the 10 Day Notice to End Tenancy for Unpaid Rent by the Landlord on February 25, 2009. The Notice states that the tenancy will end unless the Tenant pays the rent or submits an Application for Dispute Resolution seeking to set aside the Notice within five days of receiving the Notice. In the Application to Review the Landlord stated that the Tenant has not paid rent for two months. There is no evidence to show that Tenant applied to end the Notice to End Tenancy within five days of receiving that Notice.

### Analysis

Based on the evidence provided by the Landlord, I find that the Tenant was served with a 10 Day Notice to End Tenancy on February 25, 2009.

In the absence of evidence to the contrary, I find that the Tenants did not pay the outstanding rent of \$1,900.00 that was due and they did not file an Application for Dispute Resolution seeking to set aside the Notice to End Tenancy. Pursuant to section 46(5) of the *Act*, I therefore find that the Tenants have accepted that the tenancy ended on March 06, 2009.

In the absence of evidence to the contrary, I find that the Tenants still owe rent, in the amount of \$1,900.00.

### Conclusion

I find that the Landlord is entitled to an Order of Possession effective two days after service on the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the Landlord has established a monetary claim, in the amount of \$1,950.00, which is comprised on \$1,900.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. The Landlord is hereby authorized to retain the Tenant's security deposit plus interest, in the amount of \$477.18, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,472.82. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Dated March 20, 2009.

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