



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

### Dispute Codes

OPR, MNR, MNSD, FF

### Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to section 55(4) and 74(2) of the *Residential Tenancy Act (Act)*, and dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession and a monetary order.

The Landlord submitted two signed Proof of Service of the Notice of Direct Request Proceeding Forms which declare that on May 25, 2009 the Landlord served each Tenant with the Notice of Direct Request Proceeding by registered mail.

The Landlord submitted copies of two Canada Post Receipts, with tracking numbers, which indicates that the Landlord mailed a package to each Tenant at the rental unit. The Canada Post Website shows that both packages were mailed on May 25, 2009. The Website further shows that the package mailed to the Tenant with the initials of A.R. was delivered on May 27, 2009 and that the package mailed to the second Tenant has not yet been picked up from the post office.

The Landlord received the Direct Request Proceeding package on May 22, 2009 and initiated service within three days. 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 May 30, 2009.

Based on the written submissions of the Landlord, I find the Tenants have been 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 Tenants for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *Act*.

### Background and Evidence

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

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- Copies of two Proof of Service of the Notice of Direct Proceeding.
- A copy of a residential tenancy agreement between the Landlords and the Tenants. This agreement indicates that the tenancy began on January 01, 2009; that the Tenants were required to pay monthly rent of \$1,200.00 and that the Tenants paid a security deposit of \$600.00 on an undisclosed date.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was signed on May 13, 2009, which states that the Tenants must vacate the rental unit by May 23, 2009 as they have failed to pay rent in the amount of \$1,200.00 that was due on May 01, 2009. The Notice states that the tenancy will end unless the Tenants pay the rent within five days of receiving the Notice or submit an Application for Dispute Resolution seeking to set aside the Notice within five days of receiving the Notice.
- A Proof of Service that declares that the Landlord personally served the Tenant with the initials AR with the 10 Day Notice to End Tenancy on May 13, 2009 at 1125 hours, in the presence of a realtor, who has also signed the Proof of Service.
- A copy of a cheque, dated May 01, 2009, in the amount of \$1,200.00. A notation on the cheque indicates that it was tendered for rent. Documentation from the TD Canada Trust indicates that the cheque was returned due to insufficient funds in the account.

In the Application to Review the Landlord stated the Tenants were personally served with the 10 Day Notice to End Tenancy for Unpaid Rent on May 13, 2009.

In the Application to Review, the Landlord stated that the Tenants have not paid rent from May of 2009, in the amount of \$1,200.00. He is seeking a \$600.00 monetary Order and authorization to retain the security deposit of \$600.00 that he is currently holding.

## Analysis

Based on the evidence provided by the Landlord, I find that a 10 Day Notice to End Tenancy was served on one of the Tenants on May 13, 2009.

In the absence of evidence to the contrary, I find that the Tenants had not paid outstanding rent of \$1,200.00 that was due on May 01, 2009, as stated on the 10 Day Notice to End Tenancy, by the time the Landlord filed the Application for Dispute Resolution. Although the Tenants tendered a cheque for rent for May, the evidence



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shows that the cheque was returned due to insufficient funds. I have no evidence to show that the Tenants paid the outstanding rent since the Landlord filed the Application for Dispute Resolution, and therefore I find that the Tenants owe rent in the amount of \$1,200.00.

I have no evidence to show that the Tenants filed 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 accepted that the tenancy ended ten days after they are deemed to have received the Notice.

## Conclusion

I find that the Landlord is entitled to an Order of Possession effective two days after service on the Tenants. This Order may be served on the Tenants, 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 \$1,250.00, which is comprised on \$1,200.00 in unpaid rent from May of 2009 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 Tenants' security deposit, in the amount of \$600.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$650.00. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

As the Landlord did not declare the date that he received the security deposit from the Tenants, I am unable to accurately determine the amount of interest that is due on the security deposit and I am, therefore, unable to offset this monetary award by the amount of interest that is due. The Landlord is reminded of his obligation to return interest that has accrued on the security deposit to the Tenants, pursuant to section 38 of the *Act*.

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: June 01, 2009.

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Dispute Resolution Officer