



# 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 sections 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 a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on May 22, 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 a package to the rental unit. The Canada Post Website shows that this package was mailed to the rental unit on May 22, 2009, but has not yet been delivered to the recipient.

The Landlord received the Direct Request Proceeding package on May 20, 2009 and initiated service two days later. 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 27, 2009.

Based on the written submissions of the Landlord, I find the Tenant has 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 Tenant 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:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the

Tenant.

- A copy of a residential tenancy agreement for this rental unit, which was signed by the Tenant, and indicates that the tenancy began on August 01, 2008; that the Tenant was required to pay monthly rent of \$650.00; and that the Tenant paid a security deposit of \$325.00 on July 28, 2008.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was signed on May 04, 2009, which states that the Tenant must vacate the rental unit by May 14, 2009 as they have failed to pay rent in the amount of \$650.00 that was due on May 01, 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.
- A copy of the Proof of Service of the 10 Day Notice to End Tenancy that indicates that an agent for the Landlord posted the Notice on the front door of the rental unit on May 04, 2009 at 0945 hours, in the presence of another tenant, who has signed the Proof of Service.

In the Application for Dispute Resolution the Landlord stated the 10 Day Notice to End Tenancy for Unpaid Rent was posted on the front door of the rental unit on May 04, 2009.

In the “details” area of the Application for Dispute Resolution, the Landlord wrote “\$325.00 May rent”.

## Analysis

Based on the evidence provided by the Landlord, I find that a 10 Day Notice to End Tenancy was posted on the front door of the rental unit on May 04, 2009.

It is unclear from the information provided whether the Tenant still owes \$650.00 in rent from May, as stated on the 10 Day Notice to End Tenancy or whether she owes \$325.00 in rent from May, as inferred by the comments on the Application for Dispute Resolution. It is unclear to me whether the Landlord is seeking a monetary Order of \$325.00 in addition to the right to retain the security deposit to repay a \$650.00 debt or whether the Landlord is simply seeking to retain the security deposit to repay a \$325.00 debt.

Based on the information provided, I am satisfied that the Tenant owes at least \$325.00 in unpaid rent from May of 2009.

I have no evidence to show that the Tenant filed an Application for Dispute

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Resolution seeking to set aside the Notice to End Tenancy. Pursuant to section 46(5) of the *Act*, I therefore find that the Tenant has accepted that the tenancy ended ten days after she is 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 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 \$375.00, which is comprised on \$325.00 in unpaid 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 \$327.09, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$47.91. 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.

The Landlord retains the right to file another Application for Dispute Resolution to if more than \$325.00 in rent for May of 2009 was due.

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 02, 2009.

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Dispute Resolution Officer