



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

### Dispute Codes

OPR, MNR, FF

### Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to section 355(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 25, 2009 the Landlord served one of the Tenants (Alyssa) 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 one of the Tenants (Alyssa) at the rental unit. The Canada Post Website shows that this package was mailed on May 25, 2009 and was delivered on May 26, 2009.

The Landlord received the Direct Request Proceeding package on May 22, 2009 and initiated service within three days. I find that the Notice of Direct Request Proceeding was duly served on one of the Tenants (Alyssa) on May 26, 2009.

The Landlord has applied for a monetary Order which requires that the Landlord serve each respondent as set out under section 89(1). In this case only one of the two Tenants has been personally served with the Notice of Direct Request Proceeding document. Therefore, I find that the request for a monetary Order against both tenants must be amended to include only the Tenant (Alyssa) that was properly served with Notice of this Proceeding. As the second Tenant has not been properly served the Application for Dispute Resolution as required by section 89(1) of the Act the monetary claim for unpaid rent from February, April, and May against the second Tenant is dismissed without leave to reapply.

### 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; 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:

- A copy of the Proof of Service of the Notice of Direct Proceeding.
- A copy of a residential tenancy agreement that has been signed by both Tenants. This agreement indicates that the tenancy began on July 16, 2008 and that they were required to pay rent of \$500.00 on, or before, the first day of each month.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which states that the Tenants must vacate the rental unit by May 17, 2009 as they have failed to pay rent in the amount of \$1,500.00 that was due on February 01, 2009. There is a notation on the Notice which indicates that the rent is outstanding from February, April and May. 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 copy of a Proof of Service of a 10 Day Notice to End Tenancy for Unpaid Rent, in which the Landlord declared that he posted the 10 Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit on May 04, 2009.

In the Application for Dispute Resolution, the Landlord stated that he placed the 10 Day Notice to End Tenancy for Unpaid Rent in the Tenants' mail box. This is inconsistent with the information provided by the Landlord on the Proof of Service of a 10 Day Notice to End Tenancy for Unpaid Rent.

In the Application for Dispute Resolution, the Landlord stated that the Tenants have not paid rent for February, March, April, and May. This is inconsistent with the information provided by the Landlord on the Day Notice to End Tenancy for Unpaid Rent.

## Analysis

Section 46(1) of the *Act* stipulates, in part, that a landlord may end a tenancy if rent is unpaid on any day after the rent is due, by serving notice to end the tenancy. Section 46(2) of the *Act* stipulates that a notice to end tenancy under this section must comply with section 52 of the *Act*.

I find that the 10 Day Notice to End Tenancy for Unpaid Rent was substantively flawed. Specifically, I note that the Notice advised the Tenants that they failed to pay rent of \$1,500.00 that was due on February 01, 2009. Based on the written information



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provided by the Landlord, the Tenants only owed \$500.00 in rent on February 01, 2009. In reaching this conclusion, I was strongly influenced by the notation on the Notice that indicates the Tenant has not paid rent, of \$500.00 per month, for February, April, and May. This notation causes me to conclude that \$1,000.00 of the rent that is alleged to be outstanding accrued after April 01, 2009. I find this to be a significant flaw that renders the Notice to End Tenancy unenforceable.

Based on the evidence provided by the Landlord, I am satisfied that the Tenants owe \$500.00 in rent from February; \$500.00 in rent from April; and \$500.00 in rent from May.

I find that the Landlord has provided inconsistent evidence regarding outstanding rent from March. On the 10 Day Notice to End Tenancy for Unpaid Rent he indicates that rent is only outstanding for February, April, and May. In the Application for Dispute Resolution, he indicates that rent is outstanding for February, March, April, and May. Due to this inconsistency, I find that the Landlord has not clearly established that rent is due for March of 2009. On this basis, I dismiss the Landlord's application for compensation for rent from March, with leave to reapply on that specific issue.

## Conclusion

As the 10 Day Notice to End Tenancy is not enforceable, I hereby dismiss the Landlord's application for an Order of Possession. The Landlord retains the right to serve a new 10 Day Notice to End Tenancy in the event that rent continues to be outstanding.

I find that the Landlord has established a monetary claim, in the amount of \$1,550.00, which is comprised on \$1,500.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,550.00. 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: June 03, 2009.

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Dispute Resolution Officer