



# 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 a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on June 24, 2009 the Landlord served the Tenants 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 male Tenant at the rental unit. The Canada Post Website shows that this package has not been picked up by the recipient.

The Landlord submitted a copy of a Canada Post Receipt, with a tracking number, which indicates that the Landlord mailed a package to the female Tenant at the rental unit. The Canada Post Website shows that this package has not been picked up by the recipient.

The Landlord received the Direct Request Proceeding package on June 23, 2009 and initiated service within the requisite 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 June 28, 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:

- Copies of the 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 May 01, 2009; that the Tenants are required to pay monthly rent of \$1,300.00; and that the Tenants paid a security deposit of \$650.00 on April 11, 2009.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was signed on June 07, 2009, which states that the Tenants must vacate the rental unit by June 17, 2009 as they have failed to pay rent in the amount of \$1,300.00 that was due on June 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 copy of Proof of Service of the 10 Day Notice to End Tenancy, in which the Landlord declared that she posted the Notice on the door of the rental unit on June 07, 2009 at 1800 hours, in the presence of her daughter, who also 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 door of the rental unit on June 07, 2009. .

In the Application for Dispute Resolution, the Landlord stated that the Tenants owe \$1,300.00 in rent and \$150.00 in utilities, although they are only making application for a monetary Order in the amount of \$1,300.00.

## Analysis

Based on the evidence provided by the Landlord, I find that a 10 Day Notice to End Tenancy was posted on the Tenants door on June 07, 2009.

In the absence of evidence to the contrary, I find that the Tenants had not paid outstanding rent of \$1,300.00 that was due on June 01, 2008, as stated on the 10 Day Notice to End Tenancy, by the time the Landlord filed the Application for Dispute Resolution. 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 \$1,300.00.



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I dismiss the Landlord's application for \$150.00 in utilities, as the Application for Dispute Resolution did not clearly reflect that the Landlord was making a monetary claim that exceeded \$1,300.00. I grant the Landlord leave to reapply for a monetary Order for these unpaid utilities.

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 \$1,350.00, which is comprised on \$1,300.00 in unpaid rent from June 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 plus interest, in the amount of \$650.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$700.00. 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.

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: July 08, 2009.

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Dispute Resolution Officer