# Dispute Resolution Services

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 July 09, 2009 the male 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 this package was mailed on July 09, 2009 but has not yet been retrieved by the recipient.

The Landlord received the Direct Request Proceeding package on July 09, 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 July 14, 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 between the Landlord and the Tenant, which indicates that the tenancy began on February 01, 2009; that the Tenant was required to pay rent of $695.00; and that the Tenant paid a security deposit of $350.00 on January 11, 2009 and a pet damage deposit of $350.00 on January 11, 2009.

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was signed on June 22, 2009, which states that the Tenant must vacate the rental unit by June 30, 2009 as she failed to pay rent in the amount of $790.00 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 the female Landlord posted the Notice on the door of the rental unit on June 22, 2009 at 1820 hours, in the presence of her business partner.

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 22, 2009.

In the Application for Dispute Resolution, the Landlord stated that the Tenant owes $95.00 in rent from May of 2009 and $695.00 in rent from June of 2009.


Analysis

In the Application for Dispute Resolution the Landlord declared that the Tenant owed $95.00 in rent from May of 2009 and $695.00 in rent from June of 2009. Based on the information provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant owed outstanding rent of $790.00 when the Landlord filed the Application for Dispute Resolution. I have no evidence to show that the Tenant paid the outstanding rent since the Landlord filed the Application for Dispute Resolution, and therefore I find that the Tenant owes rent in the amount of $790.00.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that a 10 Day Notice to End Tenancy was posted on the front door of the rental unit on June 22, 2009. The evidence shows that this Notice declared that the Tenant had not paid rent, in the amount of $790.00, that was due on May 01, 2009. I find that the Notice to End Tenancy should have declared that the rent was due on June 01, 2009. I find that this is likely a clerical error and that the Tenant knew, or should have known, that the outstanding rent was due on June 01, 2009.

I have no evidence to show that the Tenant 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 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 $840.00, which is comprised on $790.00 in unpaid rent and $50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

The Tenant would, under normal circumstances, be entitled to the return of the security and pet damage deposit of $700.00 at the end of the tenancy.

After offsetting the two amounts, I grant the Landlord a monetary Order for the balance of $140.00. 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.

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 21, 2009.

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Dispute Resolution Officer