



# 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 July 12, 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 first Tenant at the rental unit. The Canada Post Website shows that this package was mailed on July 12, 2009 and was delivered on July 14, 2009.

The Landlord submitted a copy of a Canada Post Receipt, with a tracking number, which indicates that the Landlord mailed a package to the second Tenant at the rental unit. The Canada Post Website shows that this package was mailed on July 12, 2009 and was delivered on July 14, 2009.

The Landlord received the Direct Request Proceeding package on July 10, 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 July 17, 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:

- A copy of a Proof of Service of the Notice of Direct Proceeding for each Tenant.
- A copy of a residential tenancy agreement between the Landlord and the Tenants. This agreement indicates that the tenancy began on May 01, 2009; that the Tenants were required to pay monthly rent of \$1,450.00 on the first day of each month; and that the Tenants paid a security deposit of \$725.00.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was signed on July 03, 2009, which declares that the Tenants must vacate the rental unit by July 12, 2009 as they have failed to pay rent in the amount of \$2,900.00 that was due on July 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 personally served the Tenants with the Notice on July 03, 2009 at 2125 hours, in the presence of a friend, who also signed the Proof of Service. This Proof of Service was also signed by the Tenant with the initials "LT" .

In the Application for Dispute Resolution the Landlord declared the 10 Day Notice to End Tenancy for Unpaid Rent was personally served on July 03, 2009.

In the Application for Dispute Resolution, the Landlord declared that the Tenants owe \$1,450.00 in rent from June of 2009 and \$1,450.00 in rent from July of 2009

## Analysis

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 personally served on one of the Tenants on July 03, 2009.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenants had not paid outstanding rent of \$1,450.00 that was due on June 01, 2009 and \$1,450.00 that was due on July 01, 2009 by the time the Landlord filed this Application for Dispute Resolution. I have no evidence to show that the



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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 \$2,900.00.

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 \$2,950.00, which is comprised on \$2,900.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

Under normal circumstances the Landlord will be required to return the Tenants' security deposit, in the amount of \$725.00, at the end of the tenancy. I hereby authorize the Landlord to retain the security deposit in partial satisfaction of this monetary claim.

After offsetting these two amounts, I grant the Landlord a monetary Order for the balance of \$2,225.00. 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 22, 2009.

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Dispute Resolution Officer