



# 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 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 13, 2009 and agent for the Landlord personally served the Tenant with the Notice of Direct Request Proceeding at the rental unit. The Landlord received the Direct Request Proceeding package on July 13, 2009 and initiated service that day. Section 90 of the Residential Tenancy Act determines that a document, when served personally, is deemed to have been served on the same day of service.

Based on the written submissions of the Landlord, I find the Tenant has been duly 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; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 55, 67, and 72 of the *Act*.

### Background and Evidence

I have reviewed the following evidence 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 parties, which indicates that the tenancy began on May 15, 2009; that the rent of \$1,200.00 per month is due on the first day of the month; and that heat and utilities are not included in the rent

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- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was signed by an agent for the Landlord on July 02, 2009 which states that the Tenant must vacate the rental unit by July 06, 2009 unless the Tenant pays the rent within five days of receiving the Notice or submits an Application for Dispute Resolution seeking to set aside the Notice within five days of receiving the Notice. The Notice indicates that the Tenant owes rent, in the amount of \$1,200.00, that was due on July 01, 2009
- A copy of Proof of Service of the 10 Day Notice to End Tenancy, in which an agent for the Landlord declared that she posted the Notice on the door of the rental unit on July 02, 2009 at 0830 hours, in the presence of the president of the strata corporation, who also signed the Proof of Service.

On the Application for Dispute Resolution, the Landlord indicates that the 10 Day Notice to End Tenancy for Unpaid Rent was posted to the door on July 02, 2009.

On the Application for Dispute Resolution, the Landlord declared that the Tenant owes \$1,200.00 in rent from July and \$38.83 in utilities. This declaration is supported by the tenant ledger that was submitted in evidence.

## 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 posted on the rental unit on July 02, 2009.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant had not paid the rent of \$1,200.00 that was due on July 01, 2009, at the time the Landlord filed this Application for Dispute Resolution. I have no evidence to show that the Tenant paid the outstanding rent since filing the Application for Dispute Resolution, and therefore I find that the Tenant owes rent in the amount of \$1,200.00 for July.

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 to End Tenancy. A Notice to End Tenancy that is posted on the door of a rental unit is deemed to be received three days after it is posted, which in these circumstances is July 05, 2009. As the Tenant is deemed to have accepted that the tenancy has ended, I find that the Landlord is entitled to an Order of Possession for the rental unit.

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I dismiss the Landlord's claim for a monetary Order for unpaid utilities, with leave to reapply, as the Landlord has not submitted any evidence to show that the Tenant was given a written demand for payment of them. In the absence of proof of a written demand, I am unable to conclude that unpaid utility bills can be treated as unpaid rent, pursuant to section 46(6) of the *Act*. Section 55(4) only authorizes me to grant a monetary Order for unpaid rent via the direct request process and I am, therefore, prohibited from granting a monetary Order for unpaid utilities that do not comply with section 46(6) of the *Act*. The Landlord retains the right to file another Application for Dispute Resolution seeking compensation for these utilities.

## 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 \$1,250.00, which is comprised on \$1,200.00 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 amount of \$1,250.00. 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 23, 2009.

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Dispute Resolution Officer