



# 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 signed Proofs of Service of the Notice of Direct Request Proceeding which declares that on August 18, 2009 an agent for the Landlord served each 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 male Tenant at the rental unit. The Canada Post Website shows that this package was mailed on August 18, 2009 and was delivered on August 19, 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 female Tenant at the rental unit. The Canada Post Website shows that this package was mailed on August 18, 2009 and was delivered on August 19, 2009.

The Landlord received the Direct Request Proceeding package on August 17, 2009 and initiated service the next 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 August 23, 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 two Proofs 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 September 15, 2005; that the rent is \$3,200.00 per month; and that the Tenants paid a security deposit of \$1,000.00 on July 27, 2005 and a security deposit of \$600.00 on September 22, 2005.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was signed by an agent for the Landlord on July 28, 2009, which states that the Tenants must vacate the rental unit by August 10, 2009 as they have failed to pay rent in the amount of \$3,200.00 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 a signed Proof of Service of the 10 Day Notice to End Tenancy, in which an agent for the Landlord declared that he posted the Notice on July 28, 2009 at 1015 hours, in the presence of the Landlord, 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 at the rental unit on July 28, 2009. In the Application for Dispute Resolution, the Landlord indicated that they are claiming compensation, in the amount of \$3,200.00 for unpaid rent.

## 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 at the rental unit on July 28, 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 \$3,200.00 that was due on July 01, 2009, 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 \$3,200.00.



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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 \$3,250.00, which is comprised on \$3,200.00 in unpaid rent from July 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 \$1,656.66, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,593.34. 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: August 25, 2009.

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Dispute Resolution Officer