



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### Dispute Codes

OPR, FF

### Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to section 74(2)(b) of the 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 document which declares that at 2:18 pm on October 22, 2009 the landlord personally served tenant B.N. with the Notice of Direct Request Proceeding at the rental unit address. The landlord provided a signed document declaring tenant L.N. was served with Notice of the Direct Request Proceeding, by posting a copy of the Notice to the door of the rental unit on October 23, 2009 at 4:08 pm.

Section 88(1) of the Act determines the method of service for documents. The landlord has indicated a request for a monetary Order which requires that the landlord serve each respondent as set out under section 89(1). In this case only one of the two tenants has been personally served with the Notice of Direct Request Proceeding document. Therefore, I find that the request for a monetary Order against both tenants must be amended to include only tenant B.N. who has been properly served with Notice of this Proceeding. As the second tenant has not been properly served the Application for Dispute Resolution as required by section 89(1) of the Act the monetary claim against tenant L.N. is dismissed without leave to reapply.

However, I note that the Landlord's Application for Dispute Resolution includes reference to a monetary claim in the dispute details section only. The landlord has not included a monetary amount or has the landlord selected the appropriate section of the Application; therefore, the monetary claim is dismissed with leave to apply against both tenants. The landlord's request for filing costs may proceed against tenant B.N.

The landlord has requested an Order of possession against both tenants. Section 89(2) of the Act determines that the landlord may leave a copy of the Application for Dispute Resolution related to a request for an Order of possession at the tenant's residence with an adult who apparently resides with the tenant. As both tenants are signatories to the tenancy agreement I have determined that both parties have been sufficiently served

with the portion of the Application for Dispute Resolution relating to section 55 of the Act, requesting an order of possession.

## Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an Order of Possession for unpaid rent and filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to sections 55, and 72 of the *Residential Tenancy Act (Act)*. I have reviewed all documentary evidence.

## Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding for each tenant
- A copy of a residential tenancy agreement which was signed by the parties on December 22, 2009 indicating \$800.00 per month rent due on or before the first day of the month
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on October 7, 2009 with an effective vacancy date of October 7, 2009 for \$727.00 in unpaid rent due on October 1, 2009

Documentary evidence filed by the landlord indicates that the tenants were personally served a 10 Day Notice to End Tenancy for Unpaid Rent by the landlord to tenant L.N on October 7, 2009 at 3:17 pm at the rental unit address with a witness present. The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not apply to dispute the Notice to End Tenancy within five days.

I accept that the tenants have been served with notice to end tenancy effective on October 7, 2009.

## Analysis

Section 53 of the Act allows an effective date stated in the Notice that is earlier than the earliest date permitted under the Act, to be changed to the earliest date that complies



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with the section. Therefore, the effective date of the Notice is changed to October 17, 2009.

Based on the foregoing, I find that the tenants are conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice and I have issued the landlord an Order of possession effective two days after service.

The claim for compensation for unpaid rent is dismissed with leave to reapply.

As the landlord's claim has merit I find that the landlord is entitled to filing fee costs.

## Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service on the tenants**. This order must be served on the Respondents and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to monetary compensation under section 67 in the amount of **\$50.00** comprised of the fee paid by the Landlord for this application. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The landlord's Application for Dispute Resolution did not include a monetary amount being claimed; therefore, the landlord is at liberty to make further application requesting compensation.

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: November 03, 2009.

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Dispute Resolution Officer