



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### **Dispute Codes**

OPR, MNSD, 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 December 08, 2009 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 December 08, 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; 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 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 that was signed by the Tenant, which indicates that the tenancy began on December 15, 2006, that the rent of \$1,200.00 per month is due on the first day of the month, that the Tenant paid a security deposit of \$600.00 on December 15, 2006, and that the Tenant paid a pet damage deposit of \$300.00 on December 15, 2006

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was signed by the Landlord on November 16, 2009 which states that the Tenant must vacate the rental unit by November 26, 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 November 01, 2009.
- A copy of Proof of Service of the 10 Day Notice to End Tenancy, in which the Landlord declared that he personally served the Notice to the Tenant on November 16, 2009, in the presence of a friend, who also signed the Proof of Service.

On the Application for Dispute Resolution, the Landlord declared that the Tenant was personally served the 10 Day Notice to End Tenancy for Unpaid Rent on November 16, 2009 and that the Tenant did not pay rent for November.

### Analysis

Based on the evidence provided by the Landlord, I find that the Tenant was served with a 10 Day Notice to End Tenancy on November 16, 2009.

In the absence of evidence to the contrary, I find that the Tenant had not paid the outstanding rent from November of 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 from November in the amount of \$1,200.00.

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 on November 26, 2009.

### Conclusion

I find that the Landlord is entitled to an Order of Possession that is 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.

I find that the Landlord can offset this amount owed, pursuant to section 72(2) of the *Act*, by retaining the security deposit of \$600.00; the pet damage deposit of \$300.00; and interest on both deposits of \$27.43.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$322.57. 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: December 18, 2009.

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Dispute Resolution Officer