



# 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 matter was conducted by way of Direct Request Proceeding, pursuant to section 55(4) of the Act, and dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession and a Monetary Order for unpaid rent.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on December 16, 2009 the Landlord served the Tenants with the Notice of Direct Request Proceeding via registered mail. Section 90 of the Residential Tenancy Act determines that a document is deemed to have been served on the fifth day after it was sent.

Based on the evidence and written submissions of the Landlord, I find that the Tenants were served as required by s. 89 of the Act 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, 46, 55, 67 and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The Landlord submitted the following documentary evidence:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the Tenants;
- A copy of a residential tenancy agreement which was signed by the parties on November 1, 2009 for a one year fixed term tenancy beginning November 1, 2009 for the monthly rent of \$1,200.00 due in advance on the 1st of the month and a security deposit of \$600.00 was paid on November 1, 2009; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on December 2, 2009 with an effective vacancy date of December 12, 2009 due to \$1,200.00 in unpaid rent.



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The evidence filed by the Landlord indicates that the Tenants failed to pay the rent owed for the month of December, 2009 and that the Tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent when it was posted on the door of their rental unit on December 2, 2009. 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.

## Analysis

I have reviewed all of the documentary evidence and accept that the Tenants have been served with the Notice to End Tenancy as declared by the Landlord. The Notice is deemed to have been received by the Tenants on December 5, 2009, and the effective date of the Notice is amended to December 15, 2009 pursuant to section 53 of the *Act*. I also note that the name of one of the Tenants is spelled incorrectly on the 10 Day Notice and pursuant to s. 68(1) of the *Act* it is also amended.

I accept the evidence before me that the Tenants have failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*. 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.

## Conclusion

I find pursuant to s. 55(2)(b) of the *Act* 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 Tenants and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I also find that the Landlord is entitled to monetary compensation pursuant section 67 of the *Act* in the amount of **\$1,275.00** comprised of \$1,200.00 rent owed, a \$25.00 late fee and the \$50.00 fee paid by the Landlord for this application. I order that the Landlord may retain the deposit and interest held of \$600.00 in partial satisfaction of the claim and grant an Order for the balance due of **\$675.00**. This Order must be served on the Tenants and may be filed in the Provincial (Small Claims) Court of British Columbia 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 31, 2009.

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Dispute Resolution Officer