



# 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 Tenant 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. I find that the Tenant was 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 Tenant 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 Tenant;
- A copy of a residential tenancy agreement which was signed by the parties on December 29, 2008 for a one year fixed term tenancy beginning January 1, 2009 for the monthly rent of \$475.00 due on 1st of the month and a security deposit of \$240.00 was paid on December 13, 2008; 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 \$475.00 in unpaid rent.

The evidence filed by the Landlord indicates that the Tenant failed to pay the rent owed for the month of December, 2009 and that the Tenant was served a 10 Day Notice to



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End Tenancy for Unpaid Rent when it was posted to the door of the Tenant's rental unit on December 2, 2009. The Notice states that the Tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The Tenant 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 Tenant been served with the Notice to End Tenancy as declared by the Landlord. The Notice is deemed to have been received by the Tenant 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 accept the evidence before me that the Tenant has failed to pay the rent alleged to be owed within the 5 days granted under section 46 (4) of the *Act* and has not applied to cancel the 10 Day Notice. As a result, I find that the Tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice and the Landlord is entitled to an Order of Possession on that basis.

However, as a part of the Direct Request Proceeding, the Landlord is required to provide a **complete copy** of the tenancy agreement. The tenancy agreement provided by the Landlord states that it also includes a 4 paged Addendum which was not included in the Landlord's evidence package.

## 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 Tenant**. This Order must be served on the Tenant and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

However, in the absence of a complete copy of the tenancy agreement, I find that a conference call hearing is required to determine if the missing portions have any effect on the monetary order requested. Consequently, I order that the direct request proceeding be reconvened in accordance with section 74 of the *Act*. Notices of Reconvened Hearing are enclosed with this Decision for the Applicants to serve on the Tenant within **three (3) days** of receiving this Decision in accordance with section 88 of the *Act*. 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