



# 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 *Residential Tenancy Act* (the "Act"), and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on April 13, 2010 the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail sent to the rental unit address. The landlord provided a Canada Post receipt and tracking number as evidence of service. Section 90 of the Act determines that a document is deemed to have been served on the 5<sup>th</sup> day after mailing.

Based on the written submissions of the landlord, I find that the tenant has been served with the Direct Request Proceeding documents.

### Issue(s) to be Decided

Is the landlord entitled to an Order of possession?

Is the landlord entitled to monetary compensation for unpaid rent?

May the landlord retain the deposit paid?

Is the landlord entitled to filing fee costs?

### Background and Evidence

The landlord submitted the following evidentiary material:

- 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 October 19, 2009, indicating a monthly rent of \$1,350.00 due on or before the first day of the month, that utilities are not included in the rent and that a deposit of \$675.00 or \$470.00 was paid on October 20, 2009; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities which was issued on April 2, 2010 with a stated effective vacancy date of April 15, 2010, for \$1,350.00 in unpaid rent and unpaid utilities in the sum of \$119.07 due April 1, 2010; and
- A written history of payments made to April 9, 2010, a copy of a March 2, 2010 written warning to the tenant in relation to late rent payment and warnings regarding utility payments due;
- Copies of BC Hydro bills from December 22, 2009 to February 2, 2010 inclusive in the sum of \$259.23.

Documentary evidence filed by the landlord indicates that the tenant has failed to pay rent owed and was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting to the door on April 2, 2010 at 8 p.m. by both of the landlords. The Act deems the tenant was served on April 5, 2010.

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 from the date of service.

The Application indicates that the tenant now owes \$135.00 rent and has not paid the utility bill in the sum of \$119.07. The landlord's Application also requests a monetary Order in the sum of \$1,469.07; while the details of the dispute indicates that the landlord is claiming only \$135.00 for unpaid April rent and \$119.07 for unpaid utility costs to February 2, 2010. The Notice to End Tenancy indicates unpaid rent in the sum of \$1,350 and unpaid utilities in the amount of \$119.07.

The tenancy agreement submitted as evidence indicates that a \$675.00 deposit was paid on October 20, 2009; there is also a notation that states "security deposit collected 470.00." The evidence supporting the claim for compensation indicates that the deposit paid was in the sum of \$675.00.

### Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord.

The notice is deemed to have been received by the tenant on April 5, 2010.

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

Based on the foregoing, 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; April 15, 2010.

I am unable to determine the amount of compensation that is being sought by the landlord. The portion of the Application that provides details of the claim for compensation differs from the amount indicated elsewhere on the Application. The total owed for rent and utilities indicated on the 10 Day Notice to End Tenancy issued on April 2, 2010, agree with one of the amounts contained on the Application.

The evidence submitted by the landlord indicates that up until April 9, 2010, the tenant had not paid April rent or utilities; however the evidence does not provide consistent information as to the total amounts that were outstanding at the time this Application was made. The Application, completed on April 13, 2010, indicates that some payment may have been made. As I am unable to determine if payments have been made or not, therefore; I find that the portion of the Application requesting compensation must be heard via a participatory hearing.

Therefore, I find that the landlord is entitled to an Order of possession and the application fee cost.

I find that the landlord may retain \$50.00 from the deposit held in trust and that the balance must be disbursed as required by the *Act*. I am unable to determine what the balance of the deposit is; therefore, that will be decided as a result of the participatory hearing.

### Conclusion

Based on the conclusive presumption, I find that the landlord is entitled to an Order of Possession effective **two days after service** on the tenant and the Order 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 pursuant section 67 in the amount of **\$50.00** comprised of the fee for this application. The landlord will retain \$50.00 from the deposit held in trust. The amount of the security deposit paid and disbursement of the remainder of the deposit will be determined at the participatory hearing.

Based on the foregoing, I find that a conference call hearing is required in order to determine the details of the balance of the monetary claim and the amount of deposit

paid. Notices of Reconvened Hearing are enclosed with this decision **for the applicant to serve upon 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: April 19, 2010.

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Dispute Resolution Officer