



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

### Dispute Codes

OPR, MNR

### 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 September 15, 2010 the male Landlord served the male Respondent with the Notice of Direct Request Proceeding by registered mail. The Landlord submitted a copy of a Canada Post Receipt, with a tracking number, which corroborates that a package was mailed to the male Respondent at the rental unit. Based on the written submissions of the Landlord, I find the male Respondent has been served with the Dispute Resolution Direct Request Proceeding document. Section 90 of the Act stipulates that a document that is served by mail is deemed received on the fifth day after it is mailed which, in these circumstances, is September 20, 2010.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on September 15, 2010 the male Landlord served the female Respondent with the Notice of Direct Request Proceeding by registered mail. The Landlord submitted a copy of a Canada Post Receipt, with a tracking number, which corroborates that a package was mailed to the female Respondent at the rental unit. Based on the written submissions of the Landlord, I find the female Respondent has been served with the Dispute Resolution Direct Request Proceeding document. Section 90 of the Act stipulates that a document that is served by mail is deemed received on the fifth day after it is mailed which, in these circumstances, is September 20, 2010.

### 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 to a monetary Order for unpaid rent, pursuant to sections 55 and 67 of the *Act*.

### Background and Evidence

I have reviewed the following evidence that was submitted by the Landlord:

- A copy of the Proof of Service of the Notice of Direct Proceeding for each Respondent.
- A copy of a residential tenancy agreement that names both Respondents but is only signed by the male Respondent. The agreement indicates that the tenancy began on September 01, 2010 and that the rent of \$1,200.00 is due on the first day of each month.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was signed by both Landlords on September 04, 2010, which declares that the Respondents must vacate the rental unit by September 14, 2010 as they have failed to pay rent in the amount of \$1,200.00 that was due on September 01 2010. The Notice declares that the tenancy will end unless the Respondents pay the rent within five days of receiving the Notice or submit an Application for Dispute Resolution seeking to set aside the Notice within five days of receiving the Notice.
- A copy of a signed Proof of Service of the 10 Day Notice to End Tenancy, in which the male Landlord declared that the Notice was mailed to the Respondents on September 04, 2010, by registered mail. The Landlord submitted documentary evidence from Canada Post that indicates a package was mailed to both Respondents at the rental unit on that date.

In the Application for Dispute Resolution the Landlord declared that the 10 Day Notice to End Tenancy for Unpaid Rent was sent by registered mail on September 04, 2010.

In the Application for Dispute Resolution, the Landlord declared that the Respondents had paid all of their rent for September by September 07, 2010, with the exception of \$15.00.

### Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the male Respondent entered into a tenancy agreement that required him to pay monthly rent of \$1,200.00 on the first day of each month. As the female Respondent has not signed the tenancy agreement I find that I have insufficient evidence to conclude that she entered into a tenancy agreement for this rental unit.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the \$15.00 of the rent that was due on September 01, 2010 had not been paid by the time the Landlord filed this Application for Dispute Resolution. I have no evidence to show that the outstanding \$15.00 has been paid since the Landlord filed the Application for Dispute Resolution and I therefore find that the male Respondent

must pay \$15.00 to the Landlord. As I have insufficient evidence to show that the female Respondent is obligated to pay rent, I dismiss the Landlord's application for a monetary Order that names the female Respondent.

Section 46 of the *Act* stipulates that a landlord may end a tenancy if rent is unpaid on any day after the day it is due by giving written notice to end tenancy. As I have established that rent is outstanding from September of 2010, I find that the Landlord had the right to issue the male Respondent with a Notice to End Tenancy pursuant to section 46 of the *Act*.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that a 10 Day Notice to End Tenancy was mailed to the rental unit on September 04, 2010 in a package that was addressed to both Respondents. I therefore find that the Notice to End Tenancy was served on the male Respondent in accordance with section 88(c) of the *Act*, which stipulates that it may be served by sending a copy by mail to the address at which the person resides.

I have no evidence to show that the Respondents 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 Tenants accepted that the tenancy ended ten days after they are deemed to have received the Notice that was mailed to them on September 04, 2010. On this basis I find that the Landlord is entitled to an Order of Possession that names the male Respondent and all other occupants.

### Conclusion

I find that the Landlord is entitled to an Order of Possession. As I have ordered the Respondent to pay rent for September, I will make the Notice to End Tenancy effective on September 30, 2010. This Order may be served on the male Respondent, 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 against the male Respondent, in the amount of \$15.00, for unpaid rent and I grant the Landlord a monetary Order in that amount. This Order may be served on the male Respondent, 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: September 21, 2010.

---

Dispute Resolution Officer