



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SKYLARK REALTY INC and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution made on January 14, 2020 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities; and
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by P.S., an agent, who provided affirmed testimony. P.S. was accompanied by H.S., a witness who did not participate in the hearing. The Tenant did not attend the hearing.

On behalf of the Landlord, P.S. testified the Notice of Dispute Resolution Proceeding package was served on the Tenant by registered mail on January 14, 2020. Pursuant to sections 89 and 90 of the *Act*, documents served by registered mail are deemed to be received 5 days later. I find these documents are deemed to have been received by the Tenant on January 19, 2020.

On behalf of the Landlord, P.S. was given the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the Landlord entitled to recover the filing fee?

Background and Evidence

The tenancy agreement submitted into evidence confirms the fixed-term tenancy began on October 1, 2019 and was expected to continue to September 30, 2020. Rent in the amount of \$1,850.00 per month is due on the first day of each month. The Tenant paid a security deposit in the amount of \$925.00, which the Landlord holds.

On behalf of the Landlord, P.S. testified the Tenant did not pay rent when due on January 1, 2020. Accordingly, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated January 6, 2020 (the "10 Day Notice"). Rent in the amount of \$1,850.00 was outstanding at that time. P.S. testified the 10 Day Notice was served on the Tenant in person on January 6, 2020. Service in this manner is supported by a signed Proof of Service document which confirms service was witnessed by H.S.

In addition, P.S. testified that rent was also not paid when due on February 1 and March 1, 2020. P.S. testified that although the Tenant attempted to make partial payments via e-transfer, the Tenant did not provide the Landlord with a password to enable the payments to be accepted. As a result, no rent has been received by the Landlord since January 1, 2020 and rent in the amount of \$5,550.00 (\$1,850.00 per month x 3 months) is currently outstanding. The Tenant continues to occupy the rental unit.

The Tenant did not attend the hearing to dispute the Landlord's evidence.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 26(1) of the *Act* confirms:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

[Reproduced as written.]

The Landlord sought an order of possession. In this case, P.S. testified, and I find, that the 10 Day Notice was served on the Tenant in person on January 6, 2020. Accordingly, pursuant to section 46(4) of the *Act*, the Tenant had until January 11, 2020, to pay rent in full or to dispute the 10 Day Notice by filing an application for dispute resolution. However, there was no evidence the Tenant disputed the 10 Day Notice in accordance with section 46(4) of the *Act*, and the affirmed testimony of P.S. confirms rent has not been paid when due. As a result, pursuant to section 46(5) of the *Act*, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice and must vacate the rental unit. Therefore, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant.

Further, I find the Tenant did not pay rent as alleged by the Landlord. Therefore, I find the Landlord has established an entitlement to unpaid rent in the amount of \$5,550.00. Having been successful, the Landlord is also entitled to recover the \$100.00 filing fee paid to make the Application. Pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$5,650.00.

Conclusion

The Landlord is granted an order of possession, which will be effective two days after it is served on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia, subject to Residential Tenancy (COVID-19) Order, dated March 30, 2020.

The Landlord is granted a monetary order in the amount of \$5,650.00. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: March 31, 2020

Residential Tenancy Branch