



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Skyline Living  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNRL, FFL

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:40 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord's agent (the "agent") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the agent and I were the only ones who had called into this teleconference.

The agent testified that the tenant was served with this application for dispute resolution via registered mail on December 14, 2020, a receipt providing same was entered into evidence. I find that the tenant was served in accordance with section 89 of the *Act*.

### Preliminary Issue- Amendment

Section 64(3)(c) of the *Act* states that subject to the rules of procedure established under section 9 (3) [director's powers and duties], the director may amend an

application for dispute resolution or permit an application for dispute resolution to be amended.

Section 4.2 of the Residential Tenancy Branch Rules of Procedure (the “Rules”) states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

The landlord’s original application claimed unpaid rent and associated late fees in the amount of \$6,355.00. Since filing for dispute resolution, the landlord testified that the amount of rent owed by the tenant has increased to \$11,195.00.

I find that in this case the fact that the landlord is seeking compensation for all outstanding rent and associated late fees, not just the amount outstanding on the date the landlord filed the application, should have been reasonably anticipated by the tenant. Therefore, pursuant to section 4.2 of the Rules and section 64 of the *Act*, I amend the landlord’s application to include a monetary claim for all outstanding rent and fees in the amount of \$11,195.00.

### Issues to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent, pursuant to sections 46 and 55 of the *Act*?
2. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
3. Is the landlord entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the agent, not all details of the agent’s submissions and arguments are reproduced here. The relevant and important aspects of the landlord’s claims and my findings are set out below.

The agent provided the following undisputed testimony. This tenancy began on May 31, 2020 and is currently ongoing. Monthly rent in the amount of \$1,545.00 and parking fees of \$65.00 per month are payable on the first day of each month. A security deposit of \$817.50 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The tenancy agreement states that parking is \$90.00 per month. The landlord testified that this was an error and that parking is only \$65.00 per month.

The agent testified that as a promotion, the first two months rent (June and July 2020) were free. The agent testified that as a promotion, parking from June to December 2020 was free.

The agent testified that a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") was posted on the tenant's door on October 28, 2020. A witnessed proof of service document stating same was entered into evidence. The Notice states that the tenant failed to pay rent in the amount of \$3,090.00 that was due on October 1, 2020. The effective date of the Notice is November 6, 2020.

The agent testified that the tenant has not paid any rent, parking fees or late rent fees for the entire duration of this tenancy. The agent testified that the late rent fees are \$25.00 per month. The agent entered into a evidence a ledger showing the following outstanding amounts:

<b>Outstanding Item</b>	<b>Outstanding Amount</b>
Rent from August 2020 to February 2021	\$10,815.00 (7 months at \$1,545.00 per month)
Late payment of rent fee from September 2020 to February 2021	\$130.00 (6 months at \$25.00 per month)
Parking fee from January to February 2021	\$150.00 (2 months at \$65.00 per month)
Filing fee for arbitration	\$100.00
<b>Total</b>	<b>\$11,195.00</b>

## Analysis

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. I find that the tenant failed to pay rent in the amount of \$10,815.00 contrary to section 26 of the *Act*. The tenant therefore owes the landlord \$10,815.00 in unpaid rent.

Section 7(1)(g) of the *Residential Tenancy Act Regulation* (the "*Regulation*") states that a landlord may charge subject to subsection (2), a fee for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement. I find that parking is a permitted fee under the *Act*. I accept the agent's undisputed testimony that parking is \$65.00 per month and that as a promotion, the parking fee was not charged during 2020. I find that the tenant failed to pay the parking fee for January and February 2021 in the amount of \$65.00 per month and therefore owes the landlord \$150.00 in parking fees.

Section 7(1)(d) of the *Regulation* states that a landlord may charge subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent. Section 7(2) of the *Regulation* states that a landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

Section 7(b)(i) of the Tenancy Agreement states:

The tenant hereby acknowledges and agrees that a \$25.00 penalty is imposed for any late payment of Rent. Such a late fee will be deemed as "Rent" hereunder.

I find that the landlord is entitled, pursuant to section 7(1)(d) of the *Act* to charge a late fee of \$25.00 per month for late rent. The landlord is seeking late fees from September 2020 to February 2021, as I have already determined that rent for these months was not paid, I find that the landlord is entitled to late fees for the months claimed in the amount of \$150.00.

I find that the tenant was deemed served with the Notice on October 31, 2020, three days after it was posted, in accordance with sections 88 and 90 of the *Act*.

Section 53(2) of the *Act* states that if the effective date stated in a notice to end tenancy is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section. The earliest date permitted under section 46(1) of the *Act* is November 10, 2020. I find that the corrected effective date of the Notice is November 10, 2020.

Based on the undisputed testimony of the agent, I find that the tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the corrected effective date of the notice.

In this case, this required the tenant to vacate the premises by November 10, 2020, as that has not occurred, I find that the landlord is entitled to a 2-day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

As the landlords were successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit due to the tenant. I find that the landlord is entitled to retain the tenant's entire security deposit in the amount of \$817.50.

### Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
Unpaid rent	\$10,815.00
Parking fees	\$130.00
Late fees	\$150.00
Filing Fee	\$100.00
Less security deposit	-\$817.50

<b>TOTAL</b>	<b>\$10,377.50</b>
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The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenant**. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: February 17, 2021

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Residential Tenancy Branch