



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-S, MNDCL-S, FFL

Introduction

The landlord filed an Application for Dispute Resolution (the “Application”) on January 14, 2021 seeking an order of possession for the rental unit and to recover the filing fee for the Application. Additionally, they applied for recovery of rent amounts owing, and for other monetary amounts. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on April 13, 2021. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The landlord attended the telephone conference call hearing; the tenant did not attend.

Preliminary Matter

To proceed with this hearing, I must be satisfied that the landlord made reasonable attempts to serve the tenant with the Notice of Dispute Resolution Proceeding (the “Notice”). This means the landlord must provide proof that the document was served in a manner allowed under s. 89 of the *Act*, and I must accept that evidence.

The landlord gave testimony that they attached the Notice to the door of the rental unit on January 15, 2021. They provided a ‘Proof of Service’ in their evidence to show this. This document shows that a representative of the landlord served the Notice at 3:00 p.m. on January 15. A witness provided their name and signature to verify that this service occurred.

The *Act* s. 89 sets out specific rules for service of certain documents. The landlord applied on two distinct matters here: the Order of Possession; and monetary

compensation. For an Order of Possession, s. 89(2) governs, and this allows for service by attaching the application (i.e., the Notice) to a door at the address where the tenant resides. The portion of the Application to determine monetary compensation is not covered under this subsection. For that, s. 89(1) governs, and does *not* allow for service in this manner.

For this reason, I dismiss the portion of the Application where the landlord applies for recovery of rent amounts owing, and other compensation. On these monetary portions, the landlord has leave to reapply. This entails service in a prescribed method, with all evidence they prepared to verify their intended claim.

For the Application on the Order of Possession, I find the landlord served the tenant in a method allowed by the *Act*. This includes the evidence they prepared in advance for this hearing. I proceed on this hearing only on this discrete portion of the landlord's Application, as well as their claim for the Application filing fee.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to s. 55 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord spoke to the terms of the tenancy agreement and provided a copy in their evidence. They verified that the tenancy began on June 1, 2020 for a fixed term to end on May 31, 2021. The rent amount is \$1,675 per month. The landlord clarified that there was no security deposit paid by the tenant at the start of the tenancy; this reflects what is shown in the agreement.

The landlord applied for an Order of Possession pursuant to the 10 Day Notice to End Tenancy for Unpaid Rent (the "10-Day Notice"). They attached this to the door of the rental unit, in a conspicuous place, on October 28, 2020. They provided a 'Proof of Service' document to show this occurred at 3 p.m. on that date. A witness provided their signature to state they observed this. The individual who served the document provided their signature.

The landlord provided a copy of the 10-Day Notice. It provides that the tenant had five days from the date received to pay the rent in full or apply for dispute resolution, or the tenancy would end on the vacancy date indicated, November 6, 2020.

The reason for the landlord serving the 10 Day Notice is the unpaid rent, at that time accumulated through 2020, for \$3,170. The landlord indicates that this was due on October 1, 2020.

Analysis

From the testimony of the landlord I am satisfied that a tenancy agreement was in place. They provided the specific term of rental payment and amount. The tenant did not attend the hearing; therefore, there is no evidence before me to show otherwise.

By s. 90(c), the 10-Day Notice is deemed served to the tenant on November 1, 2020. I accept the undisputed evidence before me that the tenant failed to pay the rent owed in full by November 6, 2020, within the five days granted under s. 46(4) of the *Act*. The tenant did not dispute the 10-Day Notice within that five-day period.

Based on the foregoing, I find that the tenant is conclusively presumed under s. 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, November 6, 2020.

On my review of the document, the 10-Day Notice contains the necessary elements for it to be effective; therefore, it complies with s. 52. That is: it is signed and dated; gives the address of the rental unit; states the effective date; gives the grounds for ending the tenancy; and is in the approved form.

As the landlord is successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** 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.

Pursuant to s. 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$100.00 for recovery of the filing fee for this hearing application. 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.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: April 13, 2021

Residential Tenancy Branch