



# 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      MNRL-S, MNDCL-S, OPR, FFL

### Introduction

The landlord filed an application for dispute resolution (the “Application”) on February 16, 2021 seeking an order of possession, compensation for rent amounts owing, and other monetary loss. Additionally, the landlord seeks to recover the filing fee for the application.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on May 20, 2021. Both parties attended the conference call hearing. I explained the process and offered both parties the opportunity to ask questions. Both parties had the opportunity to present oral testimony and present evidence during the hearing.

The landlord provided evidence showing their delivery of this dispute’s Notice via Canada Post registered mail. They provided postal information that shows the delivery on February 25, 2021, and its receipt on March 1, 2021. This information verifies that the landlord’s material was sent to the tenant. In the hearing, the tenant verified they received the landlord’s prepared evidence.

### 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 a monetary order for unpaid rent and other compensation pursuant to s. 67 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. The tenancy began on April 20, 2020, with the rent amount of \$1,985 per month. The tenant paid a security deposit of \$992.50 and a pet deposit amount of \$927.50, totalling \$1,920. The tenant ledger shows the amount \$992.50 for each of these deposits, totalling \$1,985.

The agreement contains a specific clause for “arrears of rent”. The tenant agreed to pay a \$25 penalty fee for any late payment of rent.

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 January 27, 2021. They provided a proof of service document showing the same, at 12:30pm, setting out the witness observation of this transaction.

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, February 6, 2021.

The reason for the landlord serving the 10 Day Notice is the unpaid rent, accumulated as of January 1, 2021, at \$3,930.91.

In their evidence package that they duly served to the tenant in advance of the hearing, the landlord provided a ledger sheet showing the tenant’s account. As of February 3, 2021, the tenant owed \$11,498.17. For the hearing, the landlord provided an updated ledger; this shows \$13,608.17 owing. This is the amount referred to by the landlord in the hearing, and represents their updated claimed amount owing.

The tenant presented the hardship that they were dealing with over the last year. They proposed working out another payment plan and made a plea for more time and more

flexibility in any repayment plan the landlord would agree to. They offered an apology for the difficult situation and were honest about their current financial situation.

### Analysis

From the testimony of the landlord I am satisfied that a tenancy agreement was in place. The agent 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 January 30, 2021. I accept the undisputed evidence before me that the tenant failed to pay the rent owed in full by February 5, 2021, 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, February 6, 2021.

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.

I accept the evidence before me that the tenant failed to pay the rent amounts owing as set out on the landlord's ledger as of May 1, 2021. This amount is \$13,608.17. The tenant did not challenge the validity of this evidence and did not provide any evidence to the contrary. I find the landlord is entitled to the amount claimed: \$13,608.17.

The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The landlord has established a claim of \$13,608.17. After setting off the security deposit amount of \$1,985 as shown on the ledger, there is a balance of \$11,623.17. I am authorizing the landlord to keep the security deposit amount and award the balance of \$11,623.17 as compensation for rent owing.

### 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. 67 and s. 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$11,723.17 for rent recovery and recovery of the filing fee for this hearing application. The landlord is provided with this Order in the above terms and must serve the tenant with **this Order** as soon as possible. Should the tenant fail to comply with this Order, the landlord may file this Order in the Small Claims Division of the Provincial Court and where it may be 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: May 20, 2021

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Residential Tenancy Branch