



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, MNR-S, MNDC-S, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- a monetary order for unpaid rent;
- compensation for a monetary loss or other money owed;
- authority to keep the tenants' security deposit to use against a monetary award; and
- recovery of the filing fee.

The landlord's agent (landlord) attended the hearing; however, the tenants did not attend.

The landlord stated they served each tenant with their application for dispute resolution and Notice of Hearing by registered mail on February 26, 2021. The landlord provided the Canada Post Customer Receipts containing the Tracking Number to confirm this mailing.

I accept the landlord's evidence that the tenants were served notice of this hearing in a manner complying with section 89(1) of the Act and the hearing proceeded in the tenants' absence.

The landlord was provided the opportunity to present their evidence orally and make submissions to me. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Issue(s) to be Decided

Is the landlord entitled to an order of possession of the rental unit due to unpaid rent and to a monetary order for unpaid rent?

Is the landlord entitled to retain the tenants' security deposit in partial satisfaction of a monetary award and to recover the cost of the filing fee?

Background and Evidence

The written tenancy agreement filed by the landlord shows that this tenancy began on August 8, 2020, monthly rent payable by the tenants is \$1,420, due on the 1st day of the month, and a security deposit of \$710 was paid by the tenants at the beginning of the tenancy.

The landlord submitted that on January 27, 2021, the tenants were served with the Notice, by attaching it to the tenants' door, listing a total unpaid rent of \$2,510 due as of January 1, 2021. The effective vacancy date listed on the Notice was February 6, 2021. Filed in evidence was a copy of the Notice.

The landlord stated that the tenants have not vacated the rental unit and did not pay the amount listed on the Notice within five (5) days. The landlord said that since the Notice was issued to the tenants, they have made various payments on the outstanding rent deficiency. On February 17, 2021, the tenants made payments of \$1,110 and \$362.50. The tenants then made other payments through May 2021, and as of the day of the hearing, the tenants owed a total rent deficiency of \$2,314.88.

The landlord submitted that the tenants also owed \$125 due for NSF fees.

Filed in evidence was a revised monetary order worksheet and the tenant ledger sheet showing payments.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

Order of Possession-

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

When a tenant fails to pay rent pursuant to the terms of the tenancy agreement, the landlord may serve the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The Notice sets out for the benefit of the tenants that the Notice would be cancelled if the rent was paid within five (5) days. The Notice also explained that alternatively the tenants had five days to dispute the Notice by making an application for dispute resolution.

I have no evidence before me that the tenants applied to dispute the Notice.

I find the landlord submitted sufficient, unopposed evidence to prove that the tenants were served the Notice, owed the rent listed, did not pay the outstanding rent, or file an application for dispute resolution in dispute of the Notice within five days of service.

A 10 Day Notice to end the tenancy is not effective earlier than 10 days after the date the tenant receives the Notice. Under section 90 of the Act, absent evidence to the contrary, a document served by attachment to the door or other conspicuous place is deemed received three days later. Here, the Notice was attached on January 27, 2021, and deemed received on January 30, 2021. Therefore, I find that the Notice effective date is February 9, 2021, 10 days after the tenants were deemed to have received Notice on January 30, 2021.

I find the tenants are conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, in this case, February 9, 2021. I therefore order that this tenancy ended on February 9, 2021.

As a result, I find that the landlord is entitled to and I grant an order of possession of the rental unit pursuant to section 55(2) of the Act, **effective two days after service** of the order upon the tenants.

Should the tenants fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenants are **cautioned** that costs of such enforcement, **such as bailiff fees**, are subject to recovery from the tenants.

Monetary claim-

I find that the landlord submitted sufficient, unopposed evidence to prove that the tenants owe the total amount of unpaid rent of **\$2,314.88**, due under the tenancy agreement. I find the landlord has established a monetary claim in that amount.

I grant the landlord **\$125** for NSF fees for 5 late rent payments, as allowed by the written tenancy agreement.

I grant the landlord recovery of their filing fee of **\$100**.

At the landlord's request, the tenants' security deposit of **\$710** will be off-set against the total monetary award of **\$2,539.88**.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of **\$1,829.88**.

Should the tenants fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenants are cautioned that costs of such enforcement are subject to recovery from the tenants.

Conclusion

The landlord's application for an order of possession and for monetary compensation is granted.

The landlord has been authorized to retain the tenants' security deposit in partial satisfaction of their monetary award and they have been awarded a monetary order for the balance due, in the amount of **\$1,829.88**.

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: May 21, 2021