



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SKYLINE REAL ESTATE HOLDINGS
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL-S, MNDCL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for an order of possession, further to the Landlord having served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent dated January 26, 2021 ("10 Day Notice"); for a monetary order for unpaid rent in the amount of \$1,848.87; for a monetary order for damage or compensation for damage under the Act of \$156.78, retaining the security deposit for these claims; and to recover the \$100.00 cost of their Application filing fee.

An agent for the Landlord, R.P. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over 15 minutes and was monitored throughout this time. The only person to call into the hearing was the Agent, who indicated that he was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Agent.

I explained the hearing process to the Agent and gave him an opportunity to ask questions about the hearing process. During the hearing the Agent was given the opportunity to provide his evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Agent testified that he served the Tenant with the Notice of Hearing documents by Canada Post registered mail, sent on March 12, 2021. The Landlord provided Canada

Post tracking numbers as evidence of service. I find that the Tenant was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Landlord in the absence of the Tenant.

Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in the Application and the Agent confirmed these addresses in the hearing. He also confirmed his understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Agent that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which the Agent pointed or directed me in the hearing. I also advised him that he is not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Landlord submitted a tenancy agreement for the Parties, and the Agent confirmed in the hearing that the fixed-term tenancy began on August 1, 2020, running to July 31, 2021, with a monthly rent of \$1,450.00, due on the first day of each month. The Agent confirmed that the Tenant paid the Landlord a security deposit of \$725.00, and no pet damage deposit, and that the Landlord still holds this security deposit in full.

The Agent said that the Landlord seeks an order of possession for the Tenant's non-payment of rent. The Landlord submitted a ledger for this tenancy, which included details of rent payments and amounts owing, which I have inserted into the monetary order worksheet ("MWS") below. The Agent noted that the Tenant's pre-authorized rent payments for October 2020 through March 2021 were reversed for insufficient funds, which resulted in a bank charges for which the Landlord seeks reimbursement by the Tenant. These are the \$25.00 fees noted in the MWS. Further, the Landlord indicated that the Tenant paid her rent with a software application that charged \$1.13 per rent payment. The Landlord seeks reimbursement of these charges, as well.

MONETARY ORDER WORKSHEET

	Date Rent Due	Amt Owing	Amt Received	Date Received	Amt. Owing
1	Oct 2020	\$1,450.00	\$0.00		\$1,450.00
2	Oct 2020 NSF	\$25.00 NSF fee	\$0.00		\$25.00
3	Oct 2020	\$1.13 Tenant's pay App fee	\$0.00		\$1.13
4	Nov 2020	\$1,450.00	\$0.00		\$1,450.00
5	Nov 2020 NSF	\$25.00 NSF fee	\$0.00		\$25.00
6	Nov 2020	\$1.13 Tenant's pay App fee	\$0.00		\$1.13
7	Dec 2020	\$1,450.00	reversed		\$1,450.00
8	Dec 2020		\$500.00 & \$300.0	Dec 17 & Dec 21	(\$800.00)
9	Dec 2020 NSF	\$25.00 NSF fee	\$0.00		\$25.00
10	Dec 2020	\$1.13 Tenant's pay App fee	\$0.00		\$1.13
11	Jan 2021	\$1,450.00	\$950.00	Jan 5	\$500.00
12	Jan 2021		\$300.00	Jan 21	(\$300.00)
13	Jan 2021 NSF	\$25.00 NSF fee	\$0.00		\$25.00
14	Jan 2021	\$1.13 Tenant's pay App fee	\$0.00		\$1.13
15	Feb 2021	\$1,450.00	\$1,000.00	Feb 23	\$450.00
16	Feb 2021 NSF	\$25.00 NSF fee	\$0.00		\$25.00
17	Feb 2021	\$1.13 Tenant's pay App fee	\$0.00		\$1.13
18	March 2021	\$1,450.00	\$1,450.00	March 1	\$0.00
19	March 2021		\$450.00	March 1	(\$450.00)

20	March 2021		\$450.00	March 3	(\$450.00)
				TOTAL	\$3,430.65

The total amount calculated in the MWS is more than the Landlord's claim; however, I inserted these numbers into an electronic spreadsheet from the ledger and determined that the Landlord's calculations are off by \$1,450.00 – one month's rent.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

...

(4) Within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

[emphasis added]

After she received the 10 Day Notice, the Tenant did not pay the amount owing in full and she did not apply for dispute resolution to cancel the 10 Day Notice. As such, according to section 46(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

I reviewed all relevant documentary evidence and oral testimony before me and

pursuant to sections 88 and 90 of the Act, I find that the Tenant was deemed served with the 10 Day Notice on January 26, 2021, after it was delivered in person to the Tenant that day.

Section 26 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 the Act, the regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. In the hearing, the Agent said that the Landlord is owed \$2,005.65 in unpaid rent as of March 1, 2021.

The Tenant did not attend the hearing to provide testimony as to why the rent was not paid, and she did not provide any documentary evidence establishing that she had a right under the Act to deduct all or a portion of the rent owed for October 2020 through March 1, 2021. Therefore, the Landlord's Application for an order of possession is granted, pursuant to section 55 of the Act. As the effective date of the 10 Day Notice has passed, and the undisputed evidence before me is that the Tenant has not paid full rent since September 2020, the **Order of Possession will be effective two days** after service of the Order on the Tenant.

Further, pursuant to the evidence before me, including the Landlord's ledger of the rent payments for this tenancy, I find that the Tenant owes the Landlord \$3,430.65 in unpaid rent, bank charges, and the Tenant's rent payment application fees. I, therefore, award the Landlord with **\$3,430.65** from the Tenant, pursuant to section 67 of the Act. The Landlord is authorized to retain the Tenant's \$725.00 security deposit in partial satisfaction of this monetary award.

The Landlord is also awarded recovery of the \$100.00 Application filing fee pursuant to section 72 of the Act.

Accordingly, I grant the Landlord a Monetary Order from the Tenant in the amount of **\$2,805.65**, pursuant to section 67 of the Act for the remaining monetary award owing. The Tenant must be served with this Order as soon as possible.

Conclusion

The Landlord's claim for an order of possession is successful, as the Tenant has failed to pay sufficient rent to the Landlord for the last six months of the tenancy. As such, the Landlord's Application for an order of possession is granted.

Pursuant to section 55 of the Act, I grant the Landlord an Order of Possession effective **two days after service of this order** on the Tenant, given that the effective vacancy date has passed. 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 Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord is also successful in their claim for compensation from the Tenant for unpaid rent and associated fees in the amount of \$3,430.65. The Landlord is also granted recovery of the \$100.00 Application filing fee for a total award of \$3530.65. The Landlord is authorized to retain the Tenant's \$725.00 security deposit in partial satisfaction of this award. The Landlord is granted a Monetary Order of **\$2,805.65** from the Tenant for the remainder of the award owing.

This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: June 15, 2021

Residential Tenancy Branch