



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 MNDCL FFL

Introduction

This hearing was convened based on the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for an order of possession based on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 11, 2021 (10 Day Notice), for a monetary order for unpaid rent and for Non-Sufficient Funds (NSF) fees and to recover the cost of the filing fee.

An agent for the landlord, RP (agent) attended the participatory hearing and was affirmed. During the hearing the agent was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated July 16, 2021 (Notice of Hearing), application and documentary evidence were considered. The landlord testified that the Notice of Hearing, application and documentary evidence were served on both tenants by registered mail with one package for each tenant. Two registered mail tracking numbers have been included on the style of cause for ease of reference. They are identified as 1 for tenant JT, and 2 for tenant AT. Based on the above and the Canada Post registered mail tracking website, which indicates that the packages were both mailed on July 29, 2021 and delivered on August 11, 2021, and without any evidence before me to prove to the contrary, I accept that the tenants were served on August 11, 2021, which is the date the Canada Post registered mail tracking website indicates that both packages were delivered to the tenants. Give the above, I find this matter to be undisputed by the tenants.

Preliminary and Procedural Matters

The agent testified that in addition to the rent owed and NSF fees in the original claim for \$2,340.00, which the agent stated was actually \$2,290.00, the tenants have subsequently not paid the rent for July, August, September and October of 2021. Monthly rent before parking is \$1,465.00 per month and as a result, the landlord requested to amend the application to include rent owed for July, August, September and October of 2021, which totals \$5,860.00 plus 4 NSF fees of \$25.00 each for another \$200.00 before the filing fee. The agent also stated that the tenants continue to occupy the rental unit. I find that this request to amend the application does not prejudice the respondent tenants as the tenants would be aware or ought to be aware that rent is due pursuant to the tenancy agreement and that NSF fees would be charged when their cheques are returned from the bank as NSF. Therefore, I amend the application pursuant to section 64(3)(c) of the Act, from \$2,290.00 to \$8,245.00, which includes the \$100.00 filing fee.

In addition, the agent was informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The agent was also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the agent was informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. The agent did not have had any questions about my direction pursuant to RTB Rule 6.11.

Furthermore, the agent confirmed their email address at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them. The agent also confirmed the email address for the tenant and as a result, the tenants will be emailed to the email address of tenant, JT confirmed by the agent during the hearing.

Issues to be Decided

- Is the landlord entitled to an order of possession under the Act?
- Is the landlord entitled to a monetary order for unpaid rent, loss of rent or NSF fees under the Act, and if so, in what amount?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenant agreement was submitted in evidence. A fixed-term tenancy began on July 1, 2020 and reverted to a month-to-month tenancy after June 30, 2021. Monthly rent in the amount \$1,465.00 is due on the first day of each month. The agent stated that as a promotion, the tenants were not required to pay a security deposit or pet damage deposit.

The agent testified that the 10 Day Notice was served personally on the tenant(s) at the rental unit on June 11, 2021 at 12:56, by HL, which was witnessed by third party, JB. This is supported by the Proof of Service document submitted in evidence. The 10 Day Notice indicates that \$2,140.00 was owed in rent as of June 1, 2021. The landlord stated that the tenants continue to occupy the rental unit and owes the following amount in rent arrears and NSF fees:

1. May 2021 rent	\$1,465.00 owing plus \$25.00 NSF fee
2. June 2021 rent	\$520.00 owing plus \$25.00 NSF fee
3. July 2021 rent	\$1,465.00 owing plus \$25.00 NSF fee
4. August 2021 rent	\$1,465.00 owing plus \$25.00 NSF fee
5. September 2021 rent	\$1,465.00 owing plus \$25.00 NSF fee
6. October 2021 rent	\$1,465.00 owing plus \$25.00 NSF fee
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\$8,145.00 total owing	

The agent testified that the tenants did not dispute the 10 Day Notice or pay any amount owing since being served the 10 Day Notice. The effective vacancy date listed on the 10 Day Notice was June 26, 2021, which has passed.

The landlord is seeking an order of possession and a monetary order.

Analysis

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

Order of possession – I accept the landlord's undisputed testimony and I find that the tenants failed to pay any of the amount claimed by the landlord as owing or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice on June 11, 2021. The effective vacancy date of the Notice is listed as June 26, 2021, which has passed. I find the tenants are conclusively presumed pursuant to section 46 of the Act, to have accepted that the tenancy ended on the effective vacancy date of the 10 Day Notice,

which was June 26, 2021. The tenants continue to occupy the rental unit. Therefore, I **grant** the landlord an order of possession effective **two (2) days** after service on the tenants.

I find the tenancy ended on June 26, 2021 and that the tenants have overheld the rental unit since that date.

Claim for unpaid rent, loss of rent and NSF fees – Firstly, as the tenants were served and did not attend the hearing, I find the application of the landlord to be unopposed by the tenant. I accept the disputed testimony of the agent that the tenants owe \$8,145.00 as noted above.

Pursuant to section 26 of the Act, a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenants have breached section 26 of the Act by failing to comply with a standard term of the tenancy agreement, which stipulates that rent is due monthly on the first day of each month. I find the landlord has met the burden of proof and has established a monetary claim of **\$8,145.00** as indicated above.

As the landlord has succeeded with their application, I grant the landlord the recovery of the cost of the filing fee in the amount of **\$100.00**, pursuant to section 72 of the Act.

Pursuant to section 67 of the Act, I grant the landlord a monetary order in the total amount of **\$8,245.00** owing by the tenants to the landlord.

Conclusion

The landlord's application is fully successful.

The landlord has been granted an order of possession effective two (2) days after service upon the tenant. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia. The tenancy ended on June 26, 2021. The tenants are cautioned that they could be held liable for all costs related to enforcement of the order of possession.

The landlord has established a total monetary claim of \$8,245.00 and has been granted a monetary order in that amount. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The

tenants are cautioned that they could be held liable for all costs related to enforcement of the monetary order.

The decision and orders will be emailed to the landlord for service on the tenants. The tenants will be sent the decision by email as indicated above.

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: October 26, 2021

Residential Tenancy Branch