



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-DR, MNR-DR, FFL**

Introduction

This hearing dealt with the Landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. An Order of Possession for a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities (the "10 Day Notice") pursuant to Sections 46, 55 and 62 of the Act;
2. A Monetary Order to recover money for unpaid rent pursuant to Sections 26, 46 and 67 of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Agent, SD, and the Tenant, RC, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord served the Tenant with the 10 Day Notice via registered mail on September 17, 2021. SD referred me to the Canada Post registered mail tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Tenant confirms receipt of the 10 Day Notice. I find that the 10 Day Notice was deemed served on the Tenant on September 22, 2021 pursuant to Sections 88(c) and 90(a) of the Act.

The Landlord served the Notice of Dispute Resolution Proceeding package for this hearing to the Tenant via Canada Post registered mail on November 18, 2021 (the “NoDRP package”). SD referred me to the Canada Post registered mail tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Tenant confirmed receipt of the NoDRP package. I find that the Tenant was deemed served with the NoDRP package on November 23, 2021, in accordance with Sections 89(1)(c) and 90(a) of the Act.

Preliminary Matter

RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served. On this basis, I accept the Landlord’s request to amend their original application from \$1,541.00 to \$3,166.54 to reflect the unpaid rent that became owing by the time this hearing was convened.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession for a 10 Day Notice?
2. Is the Landlord entitled to a Monetary Order to recover money for unpaid rent?
3. Is the Landlord entitled to recovery of the application filing fee?

Background and Evidence

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

The parties agree that this periodic tenancy began on October 9, 2012. Presently, monthly rent is \$1,541.00 payable on the first day of each month. A security deposit of \$647.50 was collected at the start of the tenancy; however, the Landlord testifies that this security deposit has been considered in a previous RTB decision. The Landlord has no deposit money in trust for this Tenant.

The Landlord testifies that the outstanding amount of rent owing up to the end of March 2022 is \$3,166.54. This amount includes the unpaid fees which are generated in their tenant pay program. The Tenant stated that this amount seems to be correct.

The Tenant proposed a payment plan to the Landlord, and the proposition was put to the Landlord again in this hearing, but the Landlord is not agreeable to making a settlement agreement. The Landlord is seeking a Monetary Order for the outstanding rent, and an Order of Possession.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

For the Tenants' benefit, Section 26(1) of the Act specifies the rules about payment of rent. It states, a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 46 of the Act is the relevant section for this matter. It states:

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.*
- (2) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*
- ...
- (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.*

...

The Landlord's 10 Day Notice was deemed served on September 22, 2021. I find that the Landlord's 10 Day Notice complies with the form and content requirements of Section 52 of the Act. The Tenant neither paid the outstanding rent nor applied for dispute resolution; accordingly, I find the Tenant is conclusively presumed to have accepted that the tenancy has ended and must vacate the rental unit.

I must consider if the Landlord is entitled to an Order of Possession. Sections 55(2) and 55(4) of the Act read as follows:

- 55** (2) *A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:*

...

- (b) *a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;*

...

- (4) *In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 [Resolving Disputes],*

- (a) *grant an order of possession, and*
- (b) *if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.*

I find that the Tenant has not applied for dispute resolution and the time to apply for this has expired. The Landlord is entitled to an Order of Possession and a Monetary Order for the non-payment of rent and I grant these. As the Landlord has been successful, I find that the Landlord is entitled to recover the application filing fee paid to start their application. The Monetary Order is calculated as follows:

Monetary Award

TOTAL OUTSTANDING RENT:	\$3,166.54
Plus application filing fee:	\$100.00
TOTAL OWING:	\$3,266.54

Conclusion

I grant the Landlord an Order of Possession effective March 31, 2022 at 1:00 p.m. The Landlord must serve this Order on the Tenant as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the British Columbia Supreme Court.

I grant the Landlord a Monetary Order in the amount of \$3,266.54, 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 of British Columbia 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 Section 9.1(1) of the Act.

Dated: March 07, 2022

Residential Tenancy Branch