



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Skyline Apartments  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      For the tenants: RP, OLC, CNR  
For the landlord: OPR, FFL

### Introduction

This hearing dealt with a cross application. The tenants' application pursuant to the Residential Tenancy Act (the Act) is for:

- an order requiring the landlord to carry out repairs, pursuant to section 32;
- an order for the landlord to comply with the Act, the Residential Tenancy Regulation and/or tenancy agreement, under section 62; and
- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent dated January 11, 2022 (the January 11, 2022 Notice), pursuant to section 46.

The landlord's application pursuant to the Act is for:

- an order of possession under the 10 Day Notice to End Tenancy for Unpaid Rent dated March 04, 2022 (the March 04, 2022 Notice), pursuant to sections 46 and 55; and
- an authorization to recover the filing fee, under section 72.

Tenants KW (the tenant) and DN and the landlord attended the hearing. The landlord was represented by managers MM (the landlord) and DB. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

I note that sections 55 (1) and (1.1) of the Act require that when a tenant submits an application for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord under section 46 of the Act, I must consider if the landlord is entitled to an order of possession and a monetary order if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the Act.

#### Preliminary Issue – Parties

The tenants' application lists tenants KW and DN and landlord respondent Skyline apartments. The landlord's application lists landlord MM and tenant respondent KW.

The tenant and the landlord agreed the only tenant is KW and the landlord is Skyline apartments. DN is an occupant of the rental unit. The tenancy agreement submitted into evidence indicates the tenant is KW and the landlord is Skyline apartments.

Pursuant to section 64(3)(a) of the Act, I have amended the tenants' application to exclude tenant DN and the landlord's application to name the landlord Skyline apartments.

#### Preliminary Issue - Unrelated Claims

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the 10 day notice to end tenancy for unpaid rent and the continuation of this tenancy is not sufficiently related to any of the tenant's other claims to warrant that they be heard together.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the notice. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except cancellation of the notice to end tenancy which will be decided upon.

Issues to be Decided

Is the tenant entitled to cancellation of the January 11, 2022 Notice?

Is the landlord entitled to an order of possession under the January 11 or March 04, 2022 Notices?

Is the landlord entitled to a monetary order for unpaid rent under the January 11, 2022 Notice?

Is the landlord entitled to an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the applicant's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the Notices.

Both parties agreed the tenancy started in October 2018. Monthly rent is \$1,015.00, due on the first day of the month. At the outset of the tenancy a security deposit (the deposit) of \$500.00 was collected and the landlord holds it in trust.

The tenant confirmed receipt of the January 11, 2022 Notice on January 11, 2022.

A copy of the January 11, 2022 Notice was submitted into evidence. It indicates the tenant did not pay rent in the amount of \$1,015.00 due on January 01, 2022. The effective date is January 21, 2022. The Notice is signed by the landlord, gives the address of the rental unit, states the grounds to end the tenancy and it is in the approved form.

The January 11, 2022 Notice states:

Tenant Address: (rental unit number) (rental unit address)  
I, the landlord, give you 10 days' notice to move out of the rental unit located at: (office)  
(rental unit address)

Both parties agreed the rental unit number is the number recorded on the cover page of this decision.

The tenant paid \$1,040.00 on January 20, 2022: unpaid rent of \$1,015.00 and the late payment fee of \$25.00. The landlord confirmed receipt of \$1,040.00 on January 20, 2022.

The tenant continues to occupy the rental unit and submitted his application on January 20, 2022.

The tenant confirmed receipt of the March 04, 2022 Notice on March 04, 2022.

A copy of the March 04, 2022 Notice was submitted into evidence. It indicates the tenant did not pay rent in the amount of \$115.00 due on March 01, 2022. The effective date is March 14, 2022. The Notice is signed by the landlord, gives the address of the rental unit, states the grounds to end the tenancy and it is in the approved form.

The landlord confirmed receipt of \$430.00 on March 24, 2022. Later the landlord affirmed she received the payment on March 28, 2022. The landlord issued a receipt for use and occupancy only. The landlord stated the tenant did not have a balance after the March 28, 2022 payment.

The landlord applied for an order of possession under the March 04, 2022 on March 17, 2022.

The tenant testified the previous manager of the rental unit authorized him to pay rent late. The landlord said the tenant was not authorized to pay rent late.

The landlord affirmed the tenant received notices to end tenancy for unpaid rent in November 2018, February and March 2019, December 2021, January and March 2022. The parties agreed the first time the tenant paid rent later than five days after receiving the prior notices to end tenancy for unpaid rent was in January 2022.

### Analysis

I accept the undisputed testimony that the tenant received the January 11, 2022 Notice on January 11, 2022.

Section 26(1) of the Act 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.

Sections 46(4) and (5) of the Act state:

(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.

Section 46(5) of the Act is mandatory, and I do not have discretion as to its application. I find the tenant did not submit an application to dispute the January 11, 2022 Notice within the timeframe of section 46(4) of the Act, as the tenant received the Notice on January 11, 2022 and applied for dispute resolution on January 20, 2022.

Pursuant to section 46(1) of the Act, 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.

Section 52 of the Act states:

**In order to be effective, a notice to end a tenancy must be in writing and must**

(a) be signed and dated by the landlord or tenant giving the notice,

**(b) give the address of the rental unit,**

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,

(d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and

(e) when given by a landlord, be in the approved form.

(emphasis added)

Section 68(1) of the Act allows the arbitrator to amend the Notice:

If a notice to end a tenancy does not comply with section 52 [form and content of notice to end tenancy], the director may amend the notice if satisfied that

(a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and

(b) in the circumstances, it is reasonable to amend the notice.

Based on the undisputed testimony and the January 11, 2022 Notice, I am satisfied the tenant was aware the January 11, 2022 Notice was issued for the tenant to move out of the rental unit located at (rental unit number)(rental unit address). I find it is reasonable to amend the Notice to correct the address which the tenant must move out (rental unit number)(rental unit address).

I find the corrected January 11, 2022 Notice complies with section 52 of the Act, as it is signed by the landlord's representative, gives the address of the rental unit, states the ground to end tenancy and it is in the approved form.

In *Guevara v. Louie*, 2020 BCSC 380, Justice Sewell writes about the legal doctrine of estoppel:

[65] The following broad concept of estoppel, as described by Lord Denning in *Amalgamated Investment & Property Co. (In Liquidation) v. Texas Commerce International Bank Ltd.* (1981), [1982] Q.B. 84 (Eng. C.A.), at p. 122, was adopted by the Supreme Court of Canada in *Ryan v. Moore*, 2005 SCC 38 at para. 51:

...When the parties to a transaction proceed on the basis of an underlying assumption — either of fact or of law — whether due to misrepresentation or mistake makes no difference — on which they have conducted the dealings between them — neither of them will be allowed to go back on that assumption when it would be unfair or unjust to allow him to do so. If one of them does seek to go back on it, the courts will give the other such remedy as the equity of the case demands.

[66] The concept of estoppel was also described by the British Columbia Court of Appeal in *Litwin Construction (1973) Ltd. v. Pan* [1998] 29 B.C.L.R. (2d) 88 (C.A.), 52 D.L.R. (4th) 459, more recently cited with approval in *Desbiens v. Smith*, 2010 BCCA 394:

...it would be unreasonable for a party to be permitted to deny that which, knowingly or unknowingly, he has allowed or encouraged another to assume to his detriment ..." [emphasis added]. That statement was affirmed by the English Court of Appeal in *Habib Bank and*, as we read the decision, accepted by that Court in *Peyman v. Lanjani*, [1984], 3 All E.R. 703 at pp. 721 and 725 (Stephenson L.J.), p. 731 (May L.J.) and p. 735 (Slade L.J.).

Both parties agreed the tenant paid rent late several times during the tenancy and the first time the tenant paid rent later than five days after receiving a notice to end tenancy for unpaid rent was in January 2022. Thus, the estoppel doctrine does not apply.

As such, I dismiss the tenant's application for cancellation of the January 11, 2022 Notice and award the landlord an order of possession, per section 55(1) of the Act.

Based on the landlord's undisputed testimony, I find the tenant is not in rental arrears. Thus, I do not issue a monetary order for unpaid rent.

I dismiss the landlord's application for an order of possession under the March 04, 2022 Notice, as the landlord obtained an order of possession under the January 11, 2022 Notice.

I authorize the landlord to recover the filing fee, as the landlord applied on March 17, 2022 for an order of possession based on the March 04, 2022 Notice and the tenant is currently occupying the rental unit.

Conclusion

Pursuant to section 55(1) of the Act, 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 section 72(2)(b) of the Act, I authorize the landlord to deduct \$100.00 from the deposit to recover the filing fee.

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: April 22, 2022

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Residential Tenancy Branch