



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUNNY STEVEN ENTERPRISES
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

On March 16, 2022, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for unpaid rent pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 67 of the *Act*.

R.M. attended the hearing as an agent for the Landlord, and the Tenant attended the hearing as well. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

R.M. advised that the Tenant was served the Notice of Hearing and evidence package by registered mail on March 18, 2022 (the registered mail tracking number is noted on the first page of this Decision). The Tenant advised that she did not receive this package as she did not go back to the rental unit very often, and this was her own fault. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was deemed to have received this package five days after it was mailed. As such, I have accepted this evidence and will consider it when rendering this Decision.

The Tenant confirmed that she did not submit any documentary evidence for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on July 1, 2001, that rent was currently established at an amount of \$1,045.00 per month, and that it was due on the first day of each month. A security deposit of \$365.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

R.M. testified that the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities was served to the Tenant on February 4, 2022, by registered mail (the registered mail tracking number is noted on the first page of this Decision). In addition, a signed proof of service form was submitted to corroborate service.

He testified that \$1,330.00 was owing for rent on February 1, 2022 because the Tenant had not paid the remaining balance owing for January 2022 rent of \$285.00, or any rent for February 2022. As well, he indicated that the Tenant did not pay the amount of rent owing on the Notice, or dispute the Notice, within five days of being deemed to have received the Notice. He stated that she made some payments since service of the Notice, and receipts for use and occupancy were issued. He advised that, as of the date

of the hearing, the Tenant owes \$2,090.00, according to the submitted rent ledger. The effective end date of the tenancy was noted on the Notice as February 15, 2022.

The Tenant advised that she did not receive this Notice as she did not go back to the rental unit very often, and this was her own fault. She confirmed that she was in arrears the amount of rent owing on the Notice, that she did not pay this amount or dispute the Notice within five days of being deemed to have received it, and that she did not have authorization to withhold this amount. Moreover, she confirmed that, as of the date of the hearing, she owed \$2,090.00. She acknowledged that she did not have any valid reason under the *Act* to withhold the rent, and this was only done due to hardship.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

The undisputed evidence before me is that the Tenant was deemed to have received the Notice on February 9, 2022. According to Section 46(4) of the *Act*, the Tenant then had 5 days to pay the overdue rent and/or utilities or to dispute this Notice. Section 46(5) of the *Act* states that “*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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.”

As the Notice was deemed received on February 9, 2021, the Tenant must have paid the rent in full or disputed the Notice by February 14, 2022, at the latest. However, the Tenant did not do either. Based on the undisputed evidence, as there is no evidence before me that the Tenant had a valid reason under the *Act* for withholding the rent, I am satisfied that she breached the *Act* and jeopardized her tenancy.

As the Landlord’s Notice for unpaid rent is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession for unpaid rent pursuant to Sections 46 and 55 of the *Act*. As such, I find that the Landlord is entitled to an Order of Possession that takes effect **two days** after service of this Order on the Tenant.

Regarding the Landlord’s claims for monetary compensation, based on the undisputed evidence before me, I grant the Landlord a monetary award in the amount of **\$2,090.00** for the outstanding rental arrears.

As the Landlord was successful in these claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

Based on the above, 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.

In addition, I provide the Landlord with a Monetary Order in the amount of **\$2,190.00** 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 Small Claims Division of the Provincial Court 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 *Residential Tenancy Act*.

Dated: June 24, 2022

Residential Tenancy Branch