



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding SKYLINE LIVING
and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

This hearing dealt with cross-applications filed by the parties. On November 18, 2022, the Tenant made an Application for Dispute Resolution seeking to cancel 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”) and seeking authorization to assign or sublet pursuant to Section 65 of the *Act*.

On December 22, 2022, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities pursuant to Section 46 of the *Act*, seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

R.N. attend the hearing as an agent for the Landlord; however, the Tenant did not attend at any point during the 19-minute teleconference. R.N. provided a solemn affirmation.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a Decision or dismiss the Application, with or without leave to re-apply.

I dialed into the teleconference at 9:30 AM and monitored the teleconference until 9:49 AM. Only a representative of the Landlord dialed into the teleconference during this time. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that I was the only other person who had called into this teleconference.

Given that the Tenant did not attend the hearing, I have dismissed the Tenant’s Application without leave to reapply.

R.N. advised of the correct name of the Landlord, and the Style of Cause on the first page of this Decision has been amended accordingly. As well, he testified that the

Landlord's Notice of Hearing and evidence package was served to the Tenant by registered mail on December 29, 2022 (the registered mail tracking number is noted on the first page of this Decision). A copy of this tracking slip and history was submitted to corroborate service. He stated, as per the tracking history, that this package was not picked up by the Tenant, and was returned to sender. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant has been deemed to have received this package five days after it was mailed. As such, I have accepted the Landlord's evidence and will consider it when rendering this Decision.

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.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

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.

R.N. advised that the tenancy started on October 1, 2021, that rent was currently established at an amount of \$1,634.15 per month, and that it was due on the first day of each month. A security deposit of \$805.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

He testified that the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities was served to the Tenant on November 15, 2022, by being posted to the Tenant's door. As well, he referenced the proof of service form submitted to corroborate service. He testified that \$1,634.15 was owing for rent on November 1, 2022, because the Tenant

had not paid any rent for November 2022. After service of the Notice, he stated that the Tenant paid \$600.00 on November 24, 2022, and has not paid any rent since then. He referred to the rent ledger submitted as documentary evidence to support the position that the \$600.00 was the last payment received by the Landlord. He confirmed that the Tenant did not have any authority to withhold the rent. The effective end date of the tenancy was noted as November 25, 2022, on the Notice.

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.

Based on my review of the Notice, I am satisfied that it is a valid Notice.

The undisputed evidence before me is that the Tenant was deemed to have received the Notice on November 18, 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 November 18, 2022, the Tenant must have paid the rent in full or disputed the Notice by November 23, 2022, at the latest. While the Tenant paid some rent, it is clear that he did not pay the entire amount, within five days of being deemed to have received the Notice, to cancel it. Furthermore, while he

disputed this Notice on time, I note that the Tenant did not attend the hearing. As such, and as noted above, his Application was dismissed without leave to reapply.

Based on the consistent and 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 he breached the *Act* and jeopardized his 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.

Furthermore, I am satisfied from the undisputed evidence that the Landlord should be entitled to a monetary award for the rental arrears from November 2022 to February 2023.

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

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlord

Item	Amount
Rental arrears for November 2022	\$1,034.15
Rental arrears for December 2022	\$1,634.15
Rental arrears for January 2023	\$1,634.15
Rental arrears for February 2023	\$1,634.15
Filing Fee	\$100.00
Total Monetary Award	\$6,036.60

Conclusion

The Tenant's Application for Dispute Resolution is dismissed without leave to reapply.

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, the Landlord is provided with a Monetary Order in the amount of **\$6,036.60** in the above terms, and the Tenants must be served with **this Order** as soon as possible. Should the Tenants 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: February 17, 2023

Residential Tenancy Branch