



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding SKYLARK REALTY INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPL, FFL

### Introduction

On April 18, 2023, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession based on a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "Act") and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

P.S. attended the hearing as an agent for the owner/Landlord of the property, and he advised of the owner/Landlord's name. As such, the Style of Cause on the first page of this Decision has been amended accordingly. Tenant M.V. 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.

P.S. advised that he served a separate Notice of Hearing and evidence package to each Tenant by registered mail on April 28, 2023 (the registered mail tracking numbers are on the first page of this Decision). The Tenant advised that they only received these packages on May 23, 2023, as a different resident of the property only gave them the registered mail slips last week. Based on the undisputed evidence before me, pursuant to Section 90 of the *Act*, these packages were deemed received five days after they

were mailed. As such, I am satisfied that these packages were duly served to the Tenants. Moreover, I have accepted this evidence, and will consider it when rendering this Decision.

The Tenant confirmed that they did not submit any 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 for Landlord's Use of Property?
- 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 June 25, 2019, that the rent was currently established at \$2,484.72 per month, and that it was due on the first day of each month. A security deposit of \$1,200.00 and a pet damage deposit of \$1,200.00 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

All parties also agreed that the Notice was served to the Tenants by being attached to their door on February 13, 2023. The reason the Landlord checked off on the Notice was because "The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)." As well, more specifically, it was indicated on the Notice that "the landlord or the landlord's spouse" would be the persons occupying the rental unit. The effective end

date of the tenancy was noted as April 30, 2023, on the Notice. They also agreed that the property management company served this Notice on behalf of the owner.

### 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 49 of the *Act* outlines the Landlord's right to end a tenancy in respect of a rental unit where the Landlord or a close family member of the Landlord intends in good faith to occupy the rental unit. Furthermore, this Section states the following: "If a tenant who has received a notice under this section does not 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 by that date."

Section 52 of the *Act* requires that any notice to end tenancy issued by a 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.

Section 55(2) of the *Act* states that if the Tenants have not submitted an Application for Dispute Resolution seeking to cancel the Notice within the required timeframe, and the Landlord's Notice complies with all the requirements of Section 52 of the *Act*, the Landlord may be granted an Order of Possession.

The undisputed evidence before me is that the Tenants were deemed to have received the Notice on February 16, 2023. As the fifteenth day fell on Friday March 3, 2023, the Tenants must have made an Application to dispute the Notice by that day at the latest. However, the undisputed evidence is that the Tenants did not dispute this Notice. I find it important to note that the information with respect to the Tenants' right to dispute the Notice is provided on the first page of the Notice. As they did not dispute it, I am satisfied that the Tenants are conclusively presumed to have accepted the Notice.

Ultimately, I find that the Two Month Notice to End Tenancy for Landlord's Use of Property issued by the Landlord on February 13, 2023, complies with the requirements

set out in Section 52. As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenants did not dispute the Notice, I am satisfied that the Tenants are conclusively presumed to have accepted the Notice. As such, based on Sections 55 (2)(b) and (4) of the *Act*, I find that the Landlord is entitled to an Order of Possession effective **two days after service of this Order** on the Tenants.

As the Landlord was successful in this claim, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain this amount from the security deposit in satisfaction of that claim.

### Conclusion

I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenants. This Order must be served on the Tenants by the Landlord. Should the Tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: May 29, 2023

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Residential Tenancy Branch