



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ATIRA PROPERTY MANAGEMENT INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR

Introduction

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

- an Order of Possession for unpaid rent pursuant to section 55 of the *Act*.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 10:10 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. Landlord's agents L.B. and D.J. attended the hearing on behalf of the corporate landlord and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes were provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the landlord's agents and I were the only ones who had called into this teleconference.

As only the landlord's agents attended the hearing, I asked the landlord's agents to confirm that the tenant had been served with the landlord's Notice of Dispute Resolution Proceeding package for this hearing. The landlord's agent D.J. testified that the tenant was served with the Notice of Dispute Resolution Proceeding by Canada Post registered mail on November 7, 2018 and submitted into evidence a registered mail tracking number as proof of service. I have noted the tracking number on the cover sheet of this Decision.

I find that the tenant was deemed in receipt of the landlord's notice of this dispute in accordance with sections 89 and 90 of the *Act* on November 12, 2018, five days after mailing.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

A written tenancy agreement was submitted into documentary evidence, and the landlord's agents confirmed the terms of the tenancy. This tenancy began February 1, 2017 as a three-month fixed-term tenancy. At the end of the fixed term, the tenancy continued on a month-to-month basis. The monthly rent is \$450.00 payable on the first day of the month. The tenant paid a security deposit of \$225.00 at the start of the tenancy, which the landlord continues to hold. The tenant continued to reside in the rental unit at the time of the hearing.

The landlord's agents testified that the tenant failed to pay rent when due on October 1, 2018. The landlord's agent served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) by posting it to her rental unit door and placing it in the tenant's mail box on October 18, 2018. The landlord's agent submitted into documentary evidence a copy of the 10 Day Notice and a Proof of Service signed by a witness to the service, in support of his sworn testimony. The 10 Day Notice stated an effective vacancy date of October 28, 2018 for when the tenant would be required to move out of the rental unit.

The landlord's agent testified that as of October 1, 2018, the tenant was in total rental arrears of \$2,360.00 as the tenant had failed to pay rent for October and the previous four months of June, July, August and September 2018; and the tenant had rental arrears owing of \$110.00 from March 2017. The landlord's agent submitted a rent ledger into documentary evidence in support of his testimony.

Analysis

Section 26 of the *Act* requires that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

As the tenant did not attend the hearing, based on the unchallenged testimony of the landlord's agents, and the documentary evidence submitted, I find that the tenant was obligated to pay monthly rent in the amount of \$450.00 on the first day of the month, as established in their agreed upon tenancy agreement.

Further to this, I find that there is no evidence before me to conclude that the tenant had any other right to withhold rent, and therefore she remained obligated to pay rent when due.

I accept the evidence before me that the 10 Day Notice was served on the tenant by the landlord's agent by posting on her rental unit door and leaving it in her mail box on October 18, 2018. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on October 21, 2018, three days after posting.

I accept the evidence before me that the tenant failed to pay the full rent due or dispute the 10 Day Notice within the five-day time limit allowed under section 46(4) of the *Act*. Accordingly, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, October 31, 2018.

In light of the above, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or anyone on the premises 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: December 12, 2018

Residential Tenancy Branch