



Dispute Resolution Services

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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

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 11:28 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. Landlord's agents G.S. 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 G.S. testified that the tenant was served with the Notice of Dispute Resolution Proceeding by Canada Post registered mail on November 28, 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. The landlord's agent testified that the Notice of Dispute Resolution Proceeding package was also posted to the tenant's door on the same day, November 28, 2018.

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 December 3, 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. This tenancy began May 5, 2014 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 \$375.00 payable on the first day of the month. The tenant paid a security deposit of \$187.50 at the start of the tenancy. The tenant continued to reside in the rental unit at the time of the hearing.

The landlord's agent G.S. testified that on June 1, 2018, the tenant failed to make the rent payment when it was due and has failed to make any rent payments since then. By the end of August 2018, the tenant was in rental arrears of \$2,455.00.

The landlord's agent submitted a rent ledger into documentary evidence in support of his testimony.

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 the tenant's rental unit door on October 19, 2018 at approximately 10:45 a.m. The landlord's agent testified that this was witnessed by a building caretaker.

The landlord's agent submitted into documentary evidence a copy of the 10 Day Notice. The 10 Day Notice is signed and dated by the landlord's agent on October 15, 2018 and provides: the address of the rental unit; an effective vacancy date of October 28, 2018 for when the tenant would be required to move out of the rental unit; and the grounds for ending the tenancy due to accrued rent owed of \$2,455.00 as of October 1, 2018.

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 \$375.00 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 from June to October 2018, and therefore the tenant remained obligated to pay rent for these months 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 the tenant's rental unit door on October 19, 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 22, 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, November 1, 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**.

The landlord must serve this Order on the tenant as soon as possible. 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: January 08, 2019

Residential Tenancy Branch