



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-DR

Introduction

On May 10, 2019, the Landlord applied for a Direct Request proceeding seeking an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") pursuant to Section 46 of the *Residential Tenancy Act* (the "Act").

On May 17, 2019, this matter was set down for a Dispute Resolution proceeding to be heard on July 2, 2019 at 9:30 AM.

B.M. attended the hearing as an agent for the Landlord; however, the Tenant did not attend the hearing. B.M. provided a solemn affirmation.

He advised that he served the Tenant with the Notice of Hearing package and evidence by registered mail (the registered mail tracking number is on the first page of this decision). Based on the undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was served this package.

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 unpaid rent?

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.

B.M. advised that the tenancy started on December 5, 2016 and that rent was established at \$375.00 per month, due on the first of each month. A security deposit of \$187.50 was paid.

He stated that he served the Notice to the Tenant by posting it to the Tenant's door on April 16, 2019, which indicated that \$3,450.00 was outstanding on April 1, 2019. He also submitted a signed proof of service indicating how and when this Notice was served. He stated that rent had been outstanding in 2017; as well, the Tenant had not paid any rent for March, April, May, June, or July 2019.

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.

I have reviewed the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52.

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.

The undisputed evidence before me is that the Tenant was deemed to have received the Notice three days after it was posted to her door on April 16, 2019.

According to Section 46(4) of the *Act*, the Tenant has 5 days to pay the overdue rent 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 third day after being deemed to have received the Notice fell on April 24, 2019, the Tenant must have paid the rent in full or made this Application by this day at the

latest. The undisputed evidence is that the Tenant did not make an Application or pay the rent to cancel the Notice by this date. Moreover, there was not evidence that the Tenant had a valid reason for withholding the rent pursuant to the *Act*.

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 Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 52 and 55 of the *Act*.

Conclusion

I grant an Order of Possession to the Landlord **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.

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: July 2, 2019

Residential Tenancy Branch