



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* ("Act") for:

- an order of possession for unpaid rent, pursuant to section 55.

The tenant did not attend this hearing, which lasted approximately 12 minutes. The landlord's two agents, landlord LG ("landlord") and "landlord JV" attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she was the building manager and landlord JV confirmed that he was the property manager, both employed by the landlord company named in this application. Both landlord agents confirmed that they had permission to speak on the landlord company's behalf.

The landlord testified that she served the tenant with the landlord's application for dispute resolution hearing package on September 16, 2020, by way of posting to the tenant's rental unit door, where the tenant is currently residing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on September 19, 2020, three days after its posting.

The landlord confirmed that she served the tenant with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 11, 2020 ("10 Day Notice"), on the same date by way of posting to his rental unit door, where the tenant is currently residing. The landlord confirmed that the effective move-out date on the notice is September 21, 2020. 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 September 14, 2020, three days after its posting.

Issue 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 landlord's documentary evidence and the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord testified regarding the following facts. This tenancy began on August 1, 2019. Monthly rent in the amount of \$375.00 is payable on the first day of each month. A security deposit of \$187.50 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. The tenant continues to reside in the rental unit.

The landlord seeks an order of possession based on the 10 Day Notice. The landlord issued the 10 Day Notice for unpaid rent of \$375.00 due on October 1, 2019. The landlord testified that the tenant failed to pay rent of \$375.00 for October 1, 2019 and it is still outstanding. She claimed that she tried to reach a repayment plan with the tenant, but he refused to agree. She stated that she left five letters on the tenant's door and in his mailbox, regarding the tenant's non-payment of this rent, that the landlord was still pursuing this hearing and an end to this tenancy. She said that the letters are from 2020, issued on June 13, July 10, July 27, August 12, and September 11. She maintained that she spoke to the tenant a few days before this hearing, regarding this eviction. She testified that the tenant has paid rent through the Ministry from November 2019 to November 2020.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the full rent due on October 1, 2019, within five days of receiving the 10 Day Notice. The tenant has not made an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of the above actions within five days led to the end of this tenancy on September 24, 2020, the corrected effective date on the 10 Day Notice.

In this case, this required the tenant and anyone on the premises to vacate the premises by September 24, 2020. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*.

I find that the landlord did not waive its rights to pursue the 10 Day Notice, despite the fact that the tenant paid the rent in October and November 2020, after the corrected effective date on the notice of September 24, 2020. The landlord sent five letters to the tenant regarding the outstanding October 2019 rent, an end to this tenancy and a pursual of this application. The landlord spoke to the tenant a few days prior to this hearing, to discuss the non-payment of rent, an end to the tenancy and this application. The landlord served the application to the tenant and continued to pursue it at this hearing without cancelling the hearing.

Conclusion

I grant an Order of Possession to the landlord effective two (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: November 03, 2020

Residential Tenancy Branch