



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 MNR FFL

Introduction

This matter dealt with an Application for Dispute Resolution (application) by the landlord seeking remedy under the *Residential Tenancy Act* (Act) for an order of possession based on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 1, 2021 (10 Day Notice), for a monetary order for unpaid rent and to recover the cost of the filing fee.

Two agents for the landlord (agents) attended the participatory hearing and were affirmed. Attending were agents LF (agent) and CI (agent 2). During the hearing the agents were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated March 22, 2021 (Notice of Hearing), application and documentary evidence were considered. The agent testified that the Notice of Hearing and application were served on the tenants each by their own registered mail package on March 24, 2021 and were addressed to the rental unit address and that both tenants continue to occupy the rental unit as of June 28, 2021, the date of this hearing. The registered mail tracking numbers have been included on the style of cause of ease of reference and include the initials of the tenant and will be referenced as 1 and 2 for the Notice of Hearing and application. According to the Canada Post registered mail tracking website, both packages were mailed on March 24, 2021 and both were returned to sender and marked "unclaimed". As section 90 of the Act states that documents are deemed served 5 days after they are mailed and you cannot avoid service under the Act, I deem both tenants served as of March 29, 2021.

Regarding the documentary evidence, the agent testified that the tenants were served on May 27, 2021 with the landlord's documentary evidence. Two registered mail tracking numbers have been included on the style of cause for ease of reference and identified as 3 and 4 with the tenants' initials. According to the Canada Post registered mail tracking website, both packages were successfully delivered on June 10, 2021. As a result of the above, I find that both tenants were sufficiently served as of June 10, 2021 and that this matter is unopposed by the tenants. In addition, pursuant to Residential Tenancy Branch (RTB) Rules of Procedure (Rules) 7.1 and 7.3 apply and address the consequences of failing to attend a dispute resolution proceeding.

Preliminary and Procedural Matters

The agents were informed at the start of the hearing that recording of the dispute resolution is prohibited under the RTB Rule 6.11. The landlord was also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the landlord was informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. The landlord did not have had any questions about my direction pursuant to RTB Rule 6.11.

Furthermore, the agents confirmed the email address of both parties at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them. The decision only will be emailed to the tenants.

Although this hearing included an application for unpaid rent, the unpaid rent was already dealt with in a previous decision dated June 22, 2021 (Previous Decision). In addition, although the agents claimed this application was amended, I disagree as the amendment was not dated or signed and as a result, the amendment for the strata fees/fines I will not be addressing at this hearing. I find the landlord has liberty to apply for unpaid strata fees/fines; however, those will not be addressed at this hearing.

Issues to be Decided

- Is the landlord entitled to an order of possession under the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

The agents testified that the 10 Day Notice was served on the tenants on March 1, 2021 by registered mail and that the tenants did not dispute the 10 Day Notice. The agents stated that \$5,600.00 was owed as of December 1, 2020 and that the 10 Day Notice was dated March 1, 2021. The agents stated that although the tenants continue to occupy the rental unit, there has been no rent paid since November of 2020.

The landlord is seeking an order of possession and the filing fee.

Analysis

Based on the undisputed documentary evidence and undisputed testimony provided by the agents during the hearing, and on the balance of probabilities, I find the following.

Order of possession – I accept the agents' undisputed testimony and I find that the tenants failed to pay any of the amount claimed by the landlord as owing or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice on or about 5 days after March 1, 2021. 5 days has been used as section 90 of the Act deems service after 5 days once the registered mail has been sent. The effective vacancy date of the Notice is listed as March 16, 2021, which has passed. I find the tenants are conclusively presumed pursuant to section 46 of the Act, to have accepted that the tenancy ended on the effective vacancy date of the 10 Day Notice, which was March 16, 2021. The tenants continue to occupy the rental unit. Therefore, **I grant** the landlord an order of possession effective **two (2) days** after service on the tenants.

I find the tenancy ended on March 16, 2021 and that the tenants have overheld the rental unit since that date.

As the landlord has succeeded with their application, I grant the landlord the recovery of the cost of the filing fee in the amount of **\$100.00**, pursuant to section 72 of the Act.

Pursuant to sections 38 and 67 of the Act, I grant the landlord a monetary order pursuant to section 67 of the Act in the total amount of **\$100.00** owing by the tenants to the landlord for the filing fee.

Conclusion

The landlord's application is successful.

The landlord has been granted an order of possession effective two (2) days after service upon the tenants. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia. The tenancy ended on March 16, 2021.

The landlord has established a total monetary claim of \$100.00 for the filing fee and has been granted a monetary order in that amount. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The decision and orders will be emailed to the landlord for service on the tenants. The tenants will be sent the decision only by email as indicated above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: June 28, 2021

Residential Tenancy Branch