



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: Landlord: OPR-DR-PP
Tenant: MNDCT, AAT, LRE, CNR, OLC

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for unpaid rent pursuant to section 55; and
- a monetary order for unpaid rent pursuant to section 67.

The tenant requested:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70;
- an order to allow access to or from the rental unit or site for the tenant or the tenant’s guests pursuant to section 70;
- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:10 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:30 a.m. The landlord’s agent, PA (“landlord”) attended the hearing and was 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 had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord was clearly informed of the RTB Rules of Procedure Rule 6.11 which prohibits the recording of a dispute resolution hearing. The landlord confirmed that they understood.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

As the tenant did not attend this hearing, their entire application is dismissed without leave to reapply.

The landlord gave sworn testimony that on September 16, 2021, copies of the Application for Dispute Resolution hearing package ('Application') and evidence were placed in the tenant's mail box. The landlord provided a proof of service in their evidentiary materials which states that a witness, KM, observed the landlord's agent PA serve the tenant by leaving a copy of the documents in the tenant's mailbox. The landlord testified that the tenant was also served a copy in person. In accordance with sections 88, 89, and 90 of the *Act*, I find that the tenant deemed served with copies of the landlord's application and evidence on September 19, 2021, three days after posting.

The landlord provided undisputed testimony that the tenant was served with the 10 Day Notice, with an effective date of June 23, 2022, on June 10, 2021, by way of posting the 10 Day Notice on the tenant's door. In accordance with sections 88 and 90 of the *Act*, I find that the tenant deemed served with the 10 Day Notice on June 13, 2021, 3 days after posting.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession based on the 10 Day Notice?

Is the landlord entitled to a monetary award for unpaid rent or money owed under the tenancy agreement, regulation, or *Act*?

Background and Evidence

The landlord testified that this month-to-month tenancy began on December 4, 2020, with monthly rent currently set at \$375.00, payable on the first of the month. The landlord testified that no security deposit was paid for this tenancy.

The landlord testified that the 10 Day Notice was served on the tenant on June 10, 2021 as the tenant failed to pay \$2,437.50 in outstanding rent. The landlord testified that the tenant has not paid any rent since the service of the 10 Day Notice on the tenant, and the tenant now owes \$4,312.50 in outstanding rent for this tenancy.

The landlord submitted a copy of the Tenant Arrears Repayment Agreement, as well as other documents to support the outstanding rent owed by the tenant.

Analysis

Section 55(1) and (1.1) of the *Act* reads as follows:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [*landlord's notice: non-payment of rent*], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

I find that the 10 Day Notice complies with section 52 of the *Act*.

Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the effective date of the 10 Day Notice, June 23, 2021. As the tenant has not moved out, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate

the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1.1) of the *Act*, I find that the landlord is entitled to a monetary order in the amount of \$4,312.50 for the outstanding rent for this tenancy.

Conclusion

I dismiss the tenant's entire application without leave to reapply.

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.

The landlord shall be provided with a Monetary Order in the amount of \$4,312.50 for the outstanding rent for this tenancy.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: October 19, 2021

Residential Tenancy Branch