



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 **OPC**

Introduction

This hearing dealt with an application filed by the landlord pursuant the *Residential Tenancy Act* (the “Act”) for an order of possession for cause pursuant to sections 47 and 55.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until throughout the half-hour teleconference hearing scheduled for 9:30 a.m. to enable the tenant to call in. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord was represented at the hearing by program manager, JS and assistant program manager, DM. The landlord testified that they served the tenant with the Notice of Dispute Resolution Proceedings package by posting a copy to the tenant’s door on April 6, 2022. The posting was done by JS and witnessed by DM. I am satisfied the tenant is deemed served with the Notice of Dispute Resolution Proceedings on April 9, 2022, three days after it was posted to his door in accordance with sections 89 and 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for Cause?

Background and Evidence

A copy of the tenancy agreement was provided as evidence. The month to month tenancy began on March 9, 2018 with rent set at \$375.00 per month.

The landlord served the tenant with a 1 Month Notice to End Tenancy for Cause on July 28, 2021 by posting a copy to the tenant’s door. A copy of the notice was provided as

evidence. The landlord testified that the tenant filed an application to dispute the notice, however the application was dismissed with leave to reapply by an arbitrator when both parties failed to attend the hearing. The arbitrator notes in his decision that the granting of leave does not extend any applicable time limits under the Legislation. A copy of the arbitrator's decision was provided as evidence by the landlord and the file number for the previous dispute is recorded on the cover page of this decision. The landlord testified that the tenant did not file another application to dispute the July 28th notice to end tenancy.

On March 15, 2022, the program manager JS served the tenant with another notice to end tenancy by posting a copy of it to the tenant's door. The service was witnessed by assistant program manager, DM. A copy of the notice to end tenancy was not provided as evidence, but the landlord testified that it is dated March 15th and signed by program manager, JS. The landlord testified that the notice to end tenancy was drafted on form RTB-33. The address of the rental unit is provided, and the effective date stated is April 15, 2022. The ground for ending the tenancy and the "details of Cause" were read out to me during the hearing.

The landlord testified that the tenant did not file an application to dispute the second notice.

Analysis

I find the July 28, 2021 notice to end tenancy was served on the tenant on July 31, 2021, three days after it was posted to the tenant's door, in accordance with sections 88 and 90 of the Act. Although the tenant's original dispute to this notice to end tenancy was dismissed with leave to reapply, the tenant never reapplied. As the July 28th notice is still indeterminate, the landlord's right to seek an Order of Possession based on it has not been affected. I also note that section 66 of the Act prohibits the director from extending the time limit to make an application for dispute resolution to dispute a notice to end tenancy beyond the effective date of the Notice.

I find that the tenant did not make an application to dispute the Notice within 10 days of being served with it and pursuant to section 47 of the Act, the tenant is conclusively presumed to have accepted the tenancy ends on the (corrected) effective date of the Notice, August 31, 2021. Consequently, the landlord is entitled to an order of possession based on the July 28th notice to end tenancy.

Sections 47(3)(4) and (5) of the Act state:

(3) A notice under this section must comply with section 52 [form and content of notice to end tenancy].

(4) A tenant may dispute a Notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the Notice.

(5) If a tenant who has received a Notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant
(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and

(b) must vacate the rental unit by that date.

Based on undisputed testimony of the landlord, and the documents provided, I find that the both 1 Month Notice dated July 28, 2021 and the 1 Month Notice dated March 15, 2022 comply with the form and content provisions of section 52 of the Act, which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

Although the tenant had the opportunity to do so, he did not file an application to dispute the March 15th Notice within 10 days. Since the tenant did not file for dispute resolution, he is conclusively presumed to have accepted that the tenancy ends on the (corrected) effective date of that Notice, April 30, 2022. Pursuant to section 47, the landlord is entitled to an Order of Possession based on the March 15th notice to end tenancy.

As the effective date on both notices have passed, the landlord is entitled to an Order of Possession effective two days after service upon the tenant.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**.

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: May 31, 2022

Residential Tenancy Branch