



# 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-DR

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord August 17, 2022 (the “Application”). The Landlord applied for an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 25, 2022 (the “Notice”).

C.W. appeared at the hearing for the Landlord. Nobody appeared at the hearing for the Tenant. I explained the hearing process to C.W. I told C.W. they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). C.W. provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenant did not submit evidence. I addressed service of the hearing package and Landlord’s evidence.

C.W. testified that the hearing package and Landlord’s evidence were served on the Tenant in person October 14, 2022. The Landlord submitted a Proof of Service signed by the Tenant acknowledging service. I note that the Proof of Service form used relates to different documents.

Based on the undisputed testimony of C.W. and Proof of Service signed by the Tenant, I find the Tenant was served with the hearing package and Landlord’s evidence in accordance with sections 88(a) and 89(1)(a) of the *Residential Tenancy Act* (the “Act”) on October 14, 2022. I accept that the Proof of Service form relates to the hearing package and Landlord’s evidence because of the date of service, which accords with when the hearing package was sent to the Landlord to serve on the Tenant. I also find the Landlord complied with rule 3.1 of the Rules in relation to the timing of service.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. C.W. was given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

### Issue to be Decided

1. Is the Landlord entitled to an Order of Possession based on the Notice?

### Background and Evidence

A written tenancy agreement was submitted. The tenancy started October 20, 2020, and is a month-to-month tenancy. Rent is \$375.00 per month due on the first day of each month.

The Notice was submitted. The Notice states that the Tenant failed to pay \$2,698.00 in rent due March 25, 2022. The Notice is addressed to the Tenant and refers to the rental unit. The Notice is signed and dated by C.W. The Notice has an effective date of April 06, 2022.

C.W. testified that the Tenant owed \$2,698.00 in rent when the Notice was issued.

C.W. testified that the Notice was posted to the door of the rental unit March 25, 2022.

C.W. testified that the Tenant made one rent payment after the Notice was issued being \$440.00 on April 12, 2022. C.W. testified that the Tenant has not made any further rent payments since the Notice was issued.

C.W. testified that they are not aware of the Tenant disputing the Notice.

C.W. testified that the Tenant did not have authority under the *Act* to withhold rent.

C.W. confirmed the Landlord is only seeking an Order of Possession and not a Monetary Order for unpaid rent. C.W. sought an Order of Possession effective one week after service on the Tenant.

The Landlord submitted the following:

- The Notice
- Proof of Service for the Notice
- Direct Request Worksheet
- Letters to the Tenant about non-payment of rent
- Rent ledger

### Analysis

Section 26(1) of the *Act* requires a tenant to pay rent in accordance with the tenancy agreement unless they have a right to withhold rent under the *Act*.

Section 46 of the *Act* allows a landlord to end a tenancy when a tenant fails to pay rent. The relevant portions of section 46 state:

- 46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.
- (2) A notice under this section must comply with section 52...
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (4) Within 5 days after receiving a notice under this section, the tenant may
- (a) pay the overdue rent, in which case the notice has no effect, or
  - (b) dispute the notice by making an application for dispute resolution.
- (5) 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
- (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 to which the notice relates by that date...

I accept the undisputed testimony of C.W. and based on it, as well as the documentary evidence outlined, I find the following.

I find the Tenant is required to pay \$375.00 in rent per month by the first day of each month pursuant to the tenancy agreement.

I find the Tenant has not had authority under the *Act* to withhold rent and therefore was required to pay rent pursuant to section 26(1) of the *Act* and section 46(3) of the *Act* does not apply.

I find the Tenant had failed to pay \$2,698.00 in rent by March 01, 2022. Given the Tenant had failed to pay rent as required, the Landlord was entitled to serve the Tenant with the Notice pursuant to section 46(1) of the *Act*.

I find the Notice was posted to the door of the rental unit March 25, 2022. I find the Tenant was served in accordance with section 88(g) of the *Act*. Pursuant to section 90(c) of the *Act*, the Tenant is deemed to have received the Notice March 28, 2022.

I have reviewed the Notice and find it complies with section 52 of the *Act* in form and content as required by section 46(2) of the *Act*.

The Tenant had five days from receipt of the Notice on March 28, 2022, to pay the outstanding rent or dispute the Notice pursuant to section 46(4) of the *Act*.

I find the Tenant did not pay the outstanding rent of \$2,698.00 by April 02, 2022. I also find the Tenant did not dispute the Notice by April 02, 2022.

Given the Tenant did not pay the outstanding rent or dispute the Notice within five days of March 28, 2022, I find pursuant to section 46(5)(a) of the *Act* that the Tenant is conclusively presumed to have accepted that the tenancy ended April 07, 2022, the corrected effective date of the Notice. The Tenant was required pursuant to section 46(5)(b) of the *Act* to vacate the rental unit by April 07, 2022.

The Landlord is entitled to an Order of Possession. Pursuant to section 55 of the *Act*, I issue the Landlord an Order of Possession effective one week after service on the Tenant.

Conclusion

The Landlord is entitled to an Order of Possession effective one week after service on the Tenant. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the Supreme Court 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 *Act*.

Dated: November 08, 2022

---

Residential Tenancy Branch