



# 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, MNRL, FFL

### Introduction

On August 31, 2022, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

L.L. attended the hearing as an agent for the Landlord; however, the Tenant did not attend the hearing at any point during the 19-minute teleconference. At the outset of the hearing, I informed L.L. that recording of the hearing was prohibited and she was reminded to refrain from doing so. As well, she provided a solemn affirmation.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a Decision or dismiss the Application, with or without leave to re-apply.

I dialed into the teleconference at 11:00 AM and monitored the teleconference until 11:19 AM. Only a representative for the Applicant dialed into the teleconference during this time. 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 I was the only other person who had called into this teleconference.

L.L. advised that the Notice of Hearing and evidence package was served to the Tenant by registered mail on September 15, 2022 (the registered mail tracking number is noted on the first page of this Decision). She referred to the proof of service document

submitted which verified this service, as well as the fact that the package was signed for on September 21, 2022. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant has been duly served the Landlord's Notice of Hearing and evidence package.

She also indicated that she served additional evidence to the Tenant by hand on January 3, 2023, but this evidence was submitted to the Residential Tenancy Branch today. As the original documentary evidence was included in the Notice of Hearing package, I am satisfied that this was served to the Tenant and submitted to the Residential Tenancy Branch in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure (the "Rules"). As such, I have accepted this documentary evidence and will consider it when rendering this Decision. However, as the Landlord's additional evidence was only submitted to the Residential Tenancy Branch today, this does not comply with the timeframe requirements of Rule 3.14. Consequently, this additional documentary evidence will be excluded and will not be considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

L.L. advised that the tenancy started on September 1, 2020, that the rent was currently established at an amount of \$761.00 per month, and that it was due on the first day of

each month. A security deposit of \$375.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

She testified that the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities was served to the Tenant on June 13, 2022, by being posted to the Tenant's door, and she included a signed proof of service form to corroborate service upon the Tenant.

She stated that the Tenant did not pay any rent for May 2022; however, the Landlord is not seeking compensation for that month of rent at this point. In addition, she testified that the Tenant did not pay any rent on June 1, 2022. Thus, the Notice was served. She then advised that the Tenant has not paid any rent for the subsequent months after service of the Notice. She referred to the documentary evidence submitted, and she provided testimony as well, to support her position of the unpaid rent.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

When reviewing this Notice, I am satisfied that it is a valid Notice.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent. Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

The undisputed evidence before me is that the Tenant would have been deemed to have received the Notice on June 16, 2022. According to Section 46(4) of the *Act*, the Tenant then had 5 days to pay the overdue rent and/or utilities or to dispute this Notice. Section 46(5) of the *Act* states that *"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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

As the Notice was deemed received on June 16, 2022, the Tenant must have paid the rent in full or disputed the Notice by June 21, 2022, at the latest. The undisputed evidence is that the Tenant did not pay the rent in full or dispute this Notice. As there is no evidence before me that the Tenant had a valid reason under the *Act* for withholding the rent, I am satisfied that he breached the *Act* and jeopardized his tenancy.

As the Landlord's Notice for unpaid rent is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession for unpaid rent pursuant to Sections 46 and 55 of the *Act*.

In addition, I am satisfied from the undisputed evidence that the Landlord should be entitled to a monetary award for the rental arrears from June 2022 to January 2023.

As the Landlord was successful in their Application, I find that the Landlord is entitled to recover the \$100.00 filing fee.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

**Calculation of Monetary Award Payable by the Tenants to the Landlord**

Item	Amount
Rental arrears for June 2022	\$761.00
Rental arrears for July 2022	\$761.00
Rental arrears for August 2022	\$761.00
Rental arrears for September 2022	\$761.00
Rental arrears for October 2022	\$761.00
Rental arrears for November 2022	\$761.00

Rental arrears for December 2022	\$761.00
Rental arrears for January 2023	\$761.00
Filing Fee	\$100.00
<b>Total Monetary Award</b>	<b>\$6,188.00</b>

### Conclusion

Based on the above, the Landlord is provided with a formal copy of an Order of Possession effective **two days** after service on the Tenant. Should the Tenant or any occupant 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.

In addition, the Landlord is provided with a Monetary Order in the amount of **\$6,188.00** in the above terms, and 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: January 19, 2023

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Residential Tenancy Branch