



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding ATIRA PROPERTY MANAGEMENT
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord October 18, 2022 (the "Application"). The Landlord applied as follows:

- For an Order of Possession based on a One Month Notice to End Tenancy for Cause dated September 19, 2022 (the "Notice")
- For reimbursement for the filing fee

C.I., L.M. and N.O. (the "Agents") appeared at the hearing for the Landlord. Numerous witnesses called into the hearing; however, the witnesses exited the conference call until required and were not required in this matter. I explained the hearing process to the Agents. I told the Agents they are not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The Agents provided affirmed testimony.

C.I. confirmed the correct name of the Landlord which is reflected in the style of cause.

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.I. testified that the hearing package and some of the Landlord's evidence were sent to the Tenant by registered mail November 02, 2022, and Tracking Number 075 relates to this. C.I. testified that a second package of evidence was sent to the Tenant by registered mail February 09, 2023, and Tracking Number 383 relates to this. C.I. testified that documentary evidence of service had been submitted; however, the only

evidence of service submitted relates to the Notice. The Landlord did not submit documentary evidence of service of the hearing package and their evidence.

I looked Tracking Number 075 up on the Canada Post website which shows the package was unclaimed. I looked Tracking Number 383 up on the Canada Post website which shows the package has not yet been picked up.

Based on the undisputed testimony of C.I. and the Canada Post website information, I find the Tenant was served with the hearing package and Landlord's evidence in accordance with sections 88(c) and 89(2)(b) of the *Residential Tenancy Act* (the "Act"). The Tenant cannot avoid service by failing to pick up registered mail. Pursuant to section 90(a) of the *Act*, the Tenant is deemed to have received the hearing package and Landlord's evidence November 07, 2022, and February 14, 2023. I find the Landlord complied with rule 3.1 of the Rules in relation to the timing of service of the hearing package and first package of evidence. The Landlord did not comply with rule 3.14 of the Rules in relation to the timing of service of the second package of evidence; however, this package contains evidence I have not considered in this matter and therefore I do not find the late service to be an issue.

Given I was satisfied of service of the hearing package and first package of the Landlord's evidence, I proceeded with the hearing in the absence of the Tenant. The Agents were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided, other than the evidence served on the Tenant late. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on the Notice?
2. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted. The tenancy started March 01, 2022. Rent is due on or before the first day of each month.

The Notice was submitted. The Notice has an effective date of October 31, 2022. The grounds for the Notice are:

-
- ☒ Tenant has allowed an unreasonable number of occupants in the unit/site/property/park.
 - ☐ Tenant is repeatedly late paying rent
 - ☐ Tenant or a person permitted on the property by the tenant has (check all boxes that apply):
 - ☐ significantly interfered with or unreasonably disturbed another occupant or the landlord.
 - ☐ seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
 - ☐ put the landlord's property at significant risk
 - ☐ Tenant's rental unit/site is provided by the employer to the employee to occupy during the term of employment and employment has ended.
 - ☒ Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property
 - ☒ Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the landlord.
 - ☐ Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely jeopardize a lawful right or interest of another occupant or the landlord.
 - ☐ Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.
 - ☐ Tenant has not done required repairs of damage to the unit/site/property/park
 - ☒ Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Landlord submitted a Proof of Service for the Notice showing it was sent by registered mail. The Landlord provided the customer receipt with Tracking Number 724 on it. I looked Tracking Number 724 up on the Canada Post website which shows the Notice was sent September 19, 2022, a notice card was left September 23, 2022, and the package was unclaimed.

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

C.I. sought an Order of Possession effective two days after service on the Tenant.

The Landlord submitted documentary evidence to support the Notice.

Analysis

The Notice was issued pursuant to section 47 of the *Act*.

Based on the Proof of Service, customer receipt, Canada Post website information and undisputed testimony of C.I., I find the Tenant was served with the Notice in accordance

with section 88(c) of the *Act*. The Tenant cannot avoid service by failing to pick up registered mail. Pursuant to section 90(a) of the *Act*, the Tenant is deemed to have received the Notice September 24, 2022.

Pursuant to section 47(4) of the *Act*, the Tenant had ten days from receiving the Notice to dispute it. I find the Tenant has not disputed the Notice.

I have reviewed the Notice and find it complies with section 52 of the *Act* in form and content as required by section 47(3) of the *Act*.

Pursuant to section 47(5) of the *Act*, the Tenant is conclusively presumed to have accepted that the tenancy ended October 31, 2022, the effective date of the notice. The Tenant was required to vacate the rental unit by October 31, 2022.

Pursuant to section 55(2) of the *Act*, the Landlord is entitled to an Order of Possession and is issued an Order of Possession effective two days after service on the Tenant.

Given the Landlord has been successful in the Application, the Landlord is entitled to reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act* and is issued a Monetary Order in this amount.

Conclusion

The Landlord is issued an Order of Possession effective two days after service on the Tenant. This Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Supreme Court and enforced as an order of that Court.

The Landlord is issued a Monetary Order for \$100.00. This Order must be served on the Tenant and, if the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: February 28, 2023

Residential Tenancy Branch