



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

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession for unpaid rent, pursuant to section 55.

The tenant did not attend this hearing, which lasted approximately 7 minutes. The landlord's two agents, landlord LG ("landlord") and "landlord RW" attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord stated that she is the building manager for the landlord company named in this application and that she had permission to speak on its behalf. Landlord RW did not testify, he observed only.

The landlord stated that the tenant was served with the landlord's application for dispute resolution hearing package on August 12, 2020, by way of posting to the tenant's rental unit door. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on August 15, 2020, three days after its posting.

Preliminary Issue – 10 Day Notice Error

At the outset of the hearing, the landlord confirmed that she issued a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated July 27, 2020 ("10 Day Notice") to the tenant. She stated that the landlord was seeking an order of possession based on this notice. She confirmed that the effective move-out date on the notice is August 6, 2020. She testified that the landlord issued the notice for unpaid rent of \$375.00 due on October 1, 2020. She explained that the date was an error, as it should have stated that the rent was due on October 1, 2019.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month. Section 46(1) of the *Act* states that the landlord may only end a tenancy if rent is unpaid on any day after the day it is due. This means that the landlord may only issue a 10 Day Notice for a valid reason.

I accept the landlord's undisputed evidence at this hearing, as the tenant did not attend. I find that the due date for the rent indicated by the landlord on the 10 Day Notice of October 1, 2020 was incorrect, as it is a future date, which has not yet occurred. The landlord testified that the above date was incorrect, and it should have been the past date of October 1, 2019.

I find that by issuing a notice indicating an incorrect date, the tenant was not provided with proper notice of the correct date of when the rent was due. Therefore, I find that the tenant did not have proper notice of the correct date of rent due of October 1, 2019, given that it was almost a year prior to the date of this hearing on September 11, 2020, such that he could pay rent to the landlord on the correct date that it was due.

For the above reasons and on a balance of probabilities, I find that the landlord issued an invalid 10 Day Notice to the tenant and it does not comply with section 52 of the *Act*. The landlord's 10 Day Notice, dated July 27, 2020, is cancelled and of no force or effect. The landlord is not entitled to an order of possession. This tenancy continues until it is ended in accordance with the *Act*. I informed the landlord of the above decision, verbally during this hearing.

Conclusion

The landlord's application is dismissed without leave to reapply. The landlord's 10 Day Notice, dated July 27, 2020, is cancelled and of no force or effect. The landlord is not entitled to an order of possession. This tenancy continues until it is ended in accordance with the *Act*.

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: September 11, 2020

Residential Tenancy Branch