



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding OTTMANN PROPERTIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated October 31, 2014 ("1 Month Notice"), pursuant to section 47;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord's agent, GBG (individually "landlord's agent"), and two lawyers, RY and KC (collectively "landlord"), and the tenant attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses. Both parties intended to call witnesses at this hearing, but did not do so, given the settlement reached in this matter, as outlined below.

The landlord's agent gave sworn testimony that the 1 Month Notice was posted to the door where the tenant was residing, on October 31, 2014. The tenant testified that he received the 1 Month Notice. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was served as declared by the landlord's agent.

The tenant testified that he served the landlord with his application for dispute resolution hearing notice ("Application") on November 6, 2014, by way of registered mail. The landlord's agent confirmed receipt of the Application on November 10, 2014. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was served with the tenant's Application, as declared above by both parties.

The tenant testified that he served the landlord with his first written evidence package, including 3 photocopied receipts and 5 typewritten pages ("evidence"), on December 4, 2014, by way of registered mail. He provided a tracking number for this mailing, orally during the hearing. The Canada Post website confirmed that the mailing was delivered

on December 5, 2014. However, the landlord's agent testified that he did not receive the tenant's evidence. Rule 3.14 of the Residential Tenancy Branch ("RTB") Rules of Procedure states that evidence from the applicant must be received not less than 14 days prior to the hearing. The tenant testified that he was responding to the landlord's evidence submitted to the RTB on December 1 and 2, 2014. However, his evidence was a 5 page summary of his position for this hearing and 3 receipts from October 2014. The receipts are not new evidence, as it was available when the tenant filed his Application on November 6, 2014, and should have been submitted at least 14 days prior to this hearing. The summary of the tenant's evidence could be provided orally by the tenant, during this hearing. The landlord did not receive or review the tenant's evidence prior to this hearing, as it was submitted late as per the rules above. In accordance with Rule 3.17 of the RTB Rules of Procedure, I advised both parties that I would not be considering the tenant's evidence at this hearing, as I find that it may be prejudicial to the landlord to do so.

The landlord's agent testified that he personally served the tenant with the landlord's first written evidence package on November 26, 2014. The tenant testified that he received the package and reviewed the evidence. The landlord submitted its second and third written evidence packages to the tenant, although no specific date was provided, and it was received by the RTB on December 1 and 2, 2014. As per Rule 3.15 of the RTB Rules of Procedure, the evidence was submitted by the respondent 7 days before this hearing. The tenant confirmed that he received these packages and reviewed the evidence. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was served with all of the landlord's written evidence packages as declared above by the parties.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled?

Background and Evidence

The landlord's agent testified that this month to month tenancy began on March 15, 1998. Monthly rent in the current amount of \$965.00 is payable on the first day of each month. A security deposit was paid by the tenant for this tenancy. The landlord provided a written tenancy agreement, which was signed by both parties. The tenant continues to reside in the rental unit.

Analysis

The tenant received the 1 Month Notice on October 31, 2014 and filed his Application for dispute resolution on November 6, 2014. Therefore, he is within the 10 day time limit under section 47(4) of the *Act*.

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

The landlord and tenant agreed to the following final and binding settlement of all issues currently under dispute at this time:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on February 28, 2015, by which time the tenant will have vacated the rental unit;
2. Effective immediately and during the remainder of this tenancy until February 28, 2015, the tenant agreed to the following conditions with respect to his rental unit:
 - a. to keep the rental unit in a clean and orderly state without clutter, at all times;
 - b. to vacuum the rental unit once per week;
 - c. to allow periodic inspections of the rental unit by the landlord at least every 15 days at the landlord's discretion, with at least 24 hours' notice from the landlord to the tenant, beforehand;
3. Effective immediately and during the remainder of this tenancy until February 28, 2015, if any further bed bug infestations occur in the rental unit, the tenant agrees to cooperate with the landlord with respect to any treatments that need to be performed and the tenant agrees to perform any required preparations prior to these treatments;
4. Effective immediately and during the remainder of this tenancy until February 28, 2015, both parties agreed that the landlord and the CP pest control company will clearly communicate to the tenant, the required preparations that need to be undertaken by the tenant, prior to any bed bug treatments in the rental unit.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties. Both parties provided verbal confirmation that they agreed with the above terms.

Conclusion

As I advised both parties during the hearing, to give effect to the settlement reached between the parties, I issue the attached Order of Possession to be used by the landlord **only** if the tenant fails to vacate the rental premises by 1:00 p.m. on February 28, 2015. The landlord is provided with this Order in the above terms and the tenant must be served with this Order in the event that the tenant does not vacate the premises by 1:00 p.m. on February 28, 2015. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

As this dispute was resolved by mutual agreement and not based on the merits of the case, I decline the tenant's request to recover the filing fee paid for this application.

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: December 11, 2014

Residential Tenancy Branch

