



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes MT, CNC, AS, O, FF

Introduction

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

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause, dated May 5, 2017 ("1 Month Notice"), pursuant to section 66;
- cancellation of the landlord's 1 Month Notice, pursuant to section 47;
- an order allowing the tenant to assign or sublet because the landlord's permission has been unreasonably withheld, pursuant to section 65;
- other unspecified remedies; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's agent, EF ("landlord") appeared at the date and time set for the hearing of this matter. She confirmed that she was the property manager for the landlord company named in this application and that she had authority to speak on its behalf as an agent at this hearing. The applicant tenant did not appear at this hearing, although I waited until 9:49 a.m. to enable the tenant to connect with the hearing scheduled for 9:30 a.m.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application.

The landlord confirmed that the tenant was served with the landlord's written evidence package on July 7, 2017, by way of registered mail. The landlord provided a Canada Post receipt and tracking number with its written evidence. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's written evidence package on July 12, 2017, five days after its registered mailing.

The landlord testified that the tenant was served with the landlord's 1 Month Notice on May 4, 2017. The notice indicates an effective move-out date of June 30, 2017. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 1 Month Notice on May 9, 2017, five days after its registered mailing. I also note that the tenant applied to cancel this 1 Month Notice.

Preliminary Issue – Dismissal of Tenant's Application

Rule 7.3 of the Residential Tenancy Branch *Rules of Procedure* provides as follows:

7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

In the absence of any evidence or submissions from the tenant, I order the tenant's entire application dismissed without leave to reapply.

Issues to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

The landlord testified regarding the following facts. This tenancy began on October 30, 2003 with the tenant and his wife on the same written tenancy agreement. After his wife vacated the rental unit, the landlord signed a new tenancy agreement with the tenant listed as the sole occupant. Neither of the two written tenancy agreements was provided for this hearing. Monthly rent in the current amount of \$1,140.70 is payable on the first day of each month. A security deposit of \$550.00 was paid by the tenant and the landlord continues to retain this deposit. Both parties signed a written tenancy agreement but a copy was not provided for this hearing.

The landlord issued the 1 Month Notice for the following reason:

- *Tenant has assigned or sublet the rental unit/site without the landlord's written consent.*

The landlord confirmed that she spoke with a female who approached her at the landlord's office to notify that she was living with the tenant at the rental unit along with another male. She stated that the female received an envelope addressed to the tenant from the landlord with the landlord's address on it and went to tell the landlord but was scared that the tenant would find out. The landlord claimed that the only permitted tenant entitled to reside at the rental unit as per the written tenancy agreement, is the tenant. She maintained that was why the landlord signed a new written tenancy agreement with the tenant once his wife vacated.

The landlord explained that she consulted with the owner of the rental unit, who advised her to send a letter to the tenant and conduct an inspection of the rental unit in order to determine whether the tenant was subletting to other people. She provided a copy of the letter, dated April 24, 2017, that she said was handed to the tenant's girlfriend at the rental unit on the same date. The letter states that the landlord was informed that the tenant was subletting the rental unit without the landlord's written consent and that those unauthorized persons had to vacate the unit so that the landlord could inspect on May 3, 2017 and ensure compliance or an eviction notice would be given to the tenant.

The landlord claimed that she attended at the rental unit with a witness on May 3, 2017, spoke to the same female who approached the landlord earlier, and this same person again confirmed she was living at the rental unit. She said that the tenant was not present at the time so the landlord did not inspect the property. The landlord provided a witness statement, dated July 5, 2017, indicating that the witness attended the property with the landlord, a female admitted to living with the tenant and renting the unit, and the landlord did not enter the rental unit because the tenant was not there at the time. The statement indicates that the inspection of the rental unit was done on May 4, 2017, which the landlord confirmed was a clerical error because it was actually May 3, 2017. The landlord said that after this visit, a 1 Month Notice was issued to the tenant at the direction of the owner of the rental unit, because the tenant was subletting without the landlord's written consent.

Analysis

According to subsection 47(4) of the *Act*, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. The tenant was deemed to have received the 1 Month Notice on May 9, 2017, and filed his application to dispute it originally on June 29, 2017 and then amended it on July 4, 2017. Therefore, he is not within the time limit under the *Act* for either of the above dates. Although the tenant applied for more time to cancel the 1

Month Notice, he did not appear at this hearing in order to provide a reason as to why he applied late.

On a balance of probabilities and for the reasons stated below, I find that the landlord issued the 1 Month Notice for a valid reason since I find that the tenant sublet the rental unit without the landlord's written permission.

I accept the testimony of the landlord who confirmed that she spoke with a female twice, who confirmed that she was living with the tenant at the rental unit along with another male. I also accept the witness statement provided by the landlord's witness indicating that the female was renting the unit from the tenant when the landlord visited the rental property on May 3, 2017. I also note that the tenant applied for permission to sublet, as per this current application.

Section 55(1) of the *Act* reads as follows:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that the landlord's 1 Month Notice complies with section 52 of the *Act*. I accept the landlord's explanation under oath, that the 1 Month Notice was originally dated May 3, 2017, and she mistakenly changed it to May 5, 2017, when she intended to write May 4, 2017, the date it was actually served to the tenant. I find that this is a clerical error and I find that the tenant received the notice because he disputed it in this application. I also find that there was a clerical error in the witness statement, as confirmed by the landlord, since the landlord explained that she visited the rental property on May 3, 2017 not May 4.

As noted above, I dismissed the tenant's application and find that the 1 Month Notice complies with section 52 of the *Act*. I find that this tenancy ends on September 30, 2017, as the landlord confirmed during the hearing that this date was appropriate for an order of possession since the tenant paid full rent until the end of September.

Accordingly, I find that the landlord is entitled to an Order of Possession effective at 1:00 p.m. on September 30, 2017.

Conclusion

I grant an Order of Possession to the landlord effective at 1:00 p.m. on September 30, 2017. Should the tenant or anyone 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.

The tenant's entire application is dismissed without leave to reapply.

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 12, 2017

Residential Tenancy Branch