



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 3BBB GROUP INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, O

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”), and other unspecified claims.

The hearing was convened by telephone conference call and was attended by the Tenant, and two agents for the Landlord (the “Agents”); all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Tenant testified that they did not submit any documentary evidence to the Residential Tenancy Branch (the “Branch”) for consideration in the hearing, other than the Application and a copy of the One Month Notice. The Tenant also testified that they did not receive any evidence from the Landlord in relation to this hearing. The Agents testified that complaint letters from other occupants of the building which had been forwarded to the Branch, were not given to the Tenant for confidentiality reasons and that the remaining evidence submitted to the Branch had also not been served on the Tenant in relation to this hearing.

Rule 3.15 of the Rules of Procedure states that the respondent must ensure evidence that they intend to rely on at the hearing is served on the Applicant and submitted to the Branch as soon as possible and in any event, must be received by the Applicant and the Branch not less than seven days before the hearing. Rule 3.17 of the Rules of Procedure states that evidence not provided to the other party and the Branch may not be considered, and that the arbitrator has the discretion to determine whether to accept the evidence provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.

Based on the testimony of the parties, I find that the evidence for the Landlord was not exchanged in accordance with the Rules of Procedure, as it was not sent to or received by the Tenant prior to the hearing. Therefore I find that it would be a breach of the Rules of Procedure and the principles of natural justice to consider this documentary evidence in the hearing and I have excluded it from consideration accordingly.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision.

Issue(s) to be Decided

Is there a valid reason to cancel the One Month Notice under the Act?

If the Tenant is not successful in seeking to cancel the One Month Notice, is the Landlord entitled to an Order of Possession pursuant to section 55 of the Act?

Is the Tenant entitled to other remedies under the Act?

Background and Evidence

The parties agreed that the month to month tenancy began several years ago and that rent is currently due on the first day of each month in the amount of \$874.00.

The One Month Notice in the documentary evidence before me, dated August 30, 2017, has an effective vacancy date of September 30, 2017, and lists the following reasons for ending the Tenancy:

- The Tenant or a person permitted on the residential property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord of the residential property; and
- The Tenant or a person permitted on the residential property by the Tenant has engaged in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property.

The One Month Notice also indicates that it was personally served on the Tenant on August 30, 2017. The Agents testified that the One Month Notice was served in the

manner described above and the Tenant confirmed that they received the One Month Notice on August 30, 2017, the date it was personally served on them.

Analysis

I have reviewed all relevant documentary evidence and oral testimony and in accordance with section 88 of the Act, I find that the Tenant was served with the One Month Notice on August 30, 2017, the day it was personally served on them.

Section 47 of the Act states the following with regards to disputing a One Month Notice:

Landlord's notice: cause

- 47** (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.
- (5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant
- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - (b) must vacate the rental unit by that date.

The Tenant applied to dispute the One Month Notice on September 13, 2017, which is more than 10 days after their acknowledged receipt of the One Month Notice. Based on the above, I find that the Tenant failed to dispute the One Month Notice within the 10 days granted under section 47(4) of the *Act* and that the Tenant is therefore conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended on September 30, 2017, the effective date of the One Month Notice. I also note that the Tenant did not apply for additional time to make this application, and in any event, there was insufficient evidence there were exceptional circumstances that prevented the Tenant from filing on time.

As a result, the Tenant's Application to cancel the One Month Notice is dismissed. I note that Section 55 of the *Act* requires that when a tenant submits an Application seeking to cancel a Notice to End Tenancy issued by a landlord, I must consider if the

landlord is entitled to an Order of Possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with Section 52 of the *Act*.

Section 52 of the Act states the following with regards to the form and content of a Notice to End Tenancy:

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e) when given by a landlord, be in the approved form.

The One Month Notice in the documentary evidence before me, which was submitted by the Tenant, is signed and dated by the Landlord, gives the address of the rental unit, states the effective date of the notice, states the grounds for ending the tenancy, and is in the approved form. As a result, the Landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*. The Agents in the hearing agreed that the Tenancy could continue until 1:00 pm on November 30, 2017.

As no testimony of documentary evidence was submitted by the Applicant regarding their other unspecified claim, this claim is also dismissed.

Conclusion

The Tenants Application is dismissed in its entirety and pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **1:00 pm on November 30,**

2017, after service of this Order on the Tenant. The Landlord is provided with this Order 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 Supreme Court of British Columbia and enforced as an Order of that Court.

At the request of the Agents, a copy of the decision and copies of the Order of Possession will be sent to them at the e-mail address provided in the hearing. At the request of the Tenant, a copy of the decision will be mailed to them at the dispute address.

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: November 9, 2017

Residential Tenancy Branch