



Dispute Resolution Services

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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 CNC

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant under the Residential Tenancy Act (the Act), seeking:

- Cancellation of a One Month Notice to End Tenancy for Cause (the One Month Notice)

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.

The hearing was convened by telephone conference call and was attended by the Tenant, the Landlord and an agent for the Landlord (the Agent), all of whom provided affirmed testimony. The Landlord and Agent acknowledged service of the Notice of Dispute Resolution Proceeding Package from the Tenant, including a copy of the Application and the Notice of Hearing and raised no concerns regarding service. As a result, the hearing proceeded as scheduled. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Preliminary Matters

The One Month Notice in the documentary evidence before me is dated July 14, 2020; however, the Application by the Tenant seeking cancellation of the One Month Notice was not filed until August 12, 2020. As a result, I find that I must first determine whether the Application was filed on time and if not, whether the Tenant is entitled to an

extension of the timeline for having filed the Application, before assessing the merits of the Application itself.

Section 47(4) of the Act states that a tenant may dispute a One Month Notice within 10 days of receiving it. During the hearing the Landlord stated that the One Month Notice was sent to the Tenant by registered mail on July 14, 2020, and provided me with the registered mail tracking number, which has been recorded on the cover page for this decision. They also submitted a Proof of Service document confirming the above.

The Canada Post website confirms that the registered mail was sent as described above and delivered on July 15, 2020. During the hearing the Tenant confirmed that mail for tenants of the building is delivered to mailboxes, and that they never received a mail delivery notification on their door. The Tenant stated that they received the One Month Notice from their mailbox on approximately July 30, 2020, as they only check their mail once a month. As a result, the Tenant stated that they did not have earlier knowledge of the One Month Notice.

I find that registered mail to the rental unit address constitutes an acceptable method of service for the One Month Notice pursuant to section 88(c) of the Act. Although Canada Post confirms that the registered mail was delivered on July 15, 2020, only one day after it was mailed, I accept the Tenant's affirmed testimony that mail is delivered to mailboxes in the building and that they received no notice of delivery on their door. As a result, I turn to the deemed service provisions of the Act as set out under section 90. Section 90 states that a document given or served in accordance with section 88 or 89, unless earlier received, is deemed to be received on the 5th day after it is mailed or on the 3rd day after it is left in a mailbox. As a result, I find that the latest date that the Tenant could have been deemed served with the One Month Notice is July 19, 2020, five days after the registered mail was sent, pursuant to section 90(a) of the Act. As a result, I find that the Tenant was deemed served with the One Month Notice on this date, July 19, 2020.

Based on the above, I find that the Tenant had only until July 29, 2020, to dispute the One Month Notice pursuant to section 47(4) of the Act. As the Tenant did not file the Application seeking cancellation of the One Month Notice until August 12, 2020, I therefore find that it was filed outside of the legislative timelines set out above.

Although section 66(1) of the Act states that I may extend a time limit set out under the Act, it states that this must be done only in exceptional circumstances. While I appreciate that the Tenant chooses to check their mail only once per month, no

documentary evidence or testimony was presented for my consideration that it would not have been possible or reasonable for the Tenant to check their mail more frequently and in fact, I find that it was incumbent upon them to do so, given that the Act allows landlords to serve documents on tenants by mail. As a result, I find that no exceptional circumstance existed which prevented the Tenant from receiving the One Month Notice in a timely manner or would give rise to an entitlement to an extension of the timeline set out under section 47(4) of the Act for disputing the One Month Notice. In any event, even if I had accepted that the Tenant was not served or deemed served with the One Month Notice until July 30, 2020, the date they stated in the Application that they retrieved it from their mailbox, the Application seeking to dispute the One Month Notice was not filed until August 12, 2020, which is 13 days after their acknowledged receipt of the One Month Notice, and no documentary evidence or testimony was presented regarding why they could not have filed the Application within 10 days of July 30, 2020.

Based on the above, I therefore find that the Application was filed outside of the legislative timeline for doing so set out under section 47(4) of the Act and that Tenant is not entitled to an extension of the time limit for disputing the One Month Notice under section 66 of the Act. As a result, I find that the Tenant was conclusively presumed to have accepted the One Month Notice pursuant to section 47(5) of the Act when they did not file an Application seeking to dispute it by July 30, 2020, which is 10 days after the date they were deemed to have received it as set out above, and were therefore required to vacate the rental unit by August 31, 2020, the effective date of the One Month Notice.

Based on the above, I therefore dismiss the Tenant's Application seeking cancellation of the One Month Notice without leave to reapply. As the One Month Notice in the documentary evidence before me is in writing on the approved form, contains the address for the rental unit and the effective date of the notice, is signed and dated, and gives the grounds for ending the tenancy, I find that it complies with section 52 of the Act. Pursuant to section 55(1) of the Act, I therefore grant the Landlord an Order of Possession for the rental unit.

During the hearing the Landlord confirmed that rent for September and October of 2020 has been paid. As a result, the Landlord stated that they would find an Order of Possession for 1:00 P.M. on October 31, 2020, acceptable. Based on the above, I have granted the Landlord an Order of Possession for the rental unit effective at 1:00 P.M. on October 31, 2020, and I order that the Tenant vacate the rental unit in compliance with this Order of Possession once served.

Conclusion

The Tenant's Application seeking cancellation of the One Month Notice is dismissed without leave to reapply.

Pursuant to section 55(1) of the Act, I grant an Order of Possession to the Landlord effective **1:00 P.M. on October 31, 2020, 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.

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.

At the request of the Tenant, copies of the decision will be mailed to them at the rental unit address. At the request of the Landlord and Agent, a copy of the decision and Order of Possession will be emailed to them at the email address provided in the Application.

Dated: September 28, 2020

Residential Tenancy Branch