



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PROSPERO INTERNATIONAL REALTY
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 on September 27, 2021, under the *Residential Tenancy Act* (the Act), seeking:

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

The hearing was convened by telephone conference call and was attended by two agents for the Landlord (the Agents), one witness for the Landlord, and the Tenant's advocate (the Advocate). All testimony provided was affirmed. As the Agents acknowledged receipt of the Notice of Dispute Resolution Proceeding Package from the Tenant, which includes a copy of the Application and the Notice of Hearing, and raised no concerns with regards to the date or method of service, I therefore find that the Landlord was sufficiently served for the purposes of the Act and the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure). The hearing therefore proceeded as scheduled.

The parties were advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over one another and to hold their questions and responses until it was their opportunity to speak. The parties were also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and confirmed that they were not recording the proceedings.

Preliminary Matters

Preliminary Matter #1

The witness for the Landlord was excluded from the proceedings pursuant to rule 7.20 of the Rules of Procedure after I determined who was present at the teleconference for each party. The witness was initially excluded until such a time as their witness testimony was required, however, as a settlement agreement was reached, the witness was not called upon to provide any testimony.

Preliminary Matter #2

Residential Tenancy Branch Records show that the Application was filed on September 27, 2021. This date represents both the date that the Residential Tenancy Branch received the Tenant's paper Application, and the date that the Tenant paid the filing fee. In the Application the Tenant stated that the One Month Notice was posted to their door on September 9, 2021. Section 90(c) of the *Act* states that a document given or served in accordance with section 88 or 89 of the *Act*, unless earlier received, is deemed to be received on the third day after it is attached to a door or other place. Although the Tenant did not indicate in the Application if the One Month Notice was earlier received, I find that the latest date that it could have been deemed received, is September 13, 2021.

Section 47(4) of the *Act* states that 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. As a result, I find that the latest date upon which the Tenant could have filed their Application seeking cancellation of the One Month Notice, if the Tenant was deemed to have received the One Month Notice on September 13, 2021 (meaning that it was not received by the Tenant at an earlier date), was September 23, 2021. As the Tenant did not file the Application until September 27, 2021, I find that it was filed late. Although section 66(1) of the *Act* states that the director may extend a time limit established by the *Act*, it also states that this may only be done in exceptional circumstances, and I note that the Tenant neither sought an extension to the time limit set out in section 46(4) of the *Act* in the Application, nor did they or the Advocate provide any documentary evidence or testimony regarding whether exceptional circumstances applied.

As a result of the above, I am satisfied that the Tenant filed the Application late, and that no exceptional circumstances existed that would permit me to extend the time limit set out under section 47(4) of the *Act*. Section 47(5) of the *Act* states that 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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

However, as the parties opted to resolve the Application via settlement pursuant to section 63 of the *Act*, as set out below, because they had already reached a mutual agreement to end the tenancy, I did not apply conclusive presumption or determine whether the Landlord was therefore entitled to an Order of Possession for the rental unit pursuant to section 55(1) of the *Act*.

Preliminary Matter #3

Although the Advocate attended the hearing on the Tenant's behalf, the Tenant did not attend, despite efforts by the Advocate during the hearing to contact the Tenant and have them attend. Although the Advocate stated that they were not authorized to take all actions on the Tenant's behalf at the hearing, they were authorized to express the Tenant's wishes to comply with the mutual agreement to end tenancy already reached in writing between the parties. As this was agreeable to the Agents, and copies of the mutual agreements to end tenancy signed by the parties were before me, the hearing proceeded by way of settlement, as set out below.

Settlement

The opportunity for settlement was discussed with the parties during the hearing. The parties were advised on several occasions during the hearing that there is no obligation to resolve the dispute through settlement, but that pursuant to section 63 of the *Act*, I could assist the parties to reach an agreement, which would be documented in my Decision and supporting Orders. The Advocate expressed that the Tenant wanted to settle this matter by complying with the mutual agreements to end tenancy already reached between the Tenant and the Landlord. Copies of a self-authored mutual agreement to end tenancy on the Landlord's letter head and an RTB-8 Mutual Agreement to End a Tenancy form, were submitted for my consideration. At the hearing, the Agents and the Advocate stated that these accurately reflect the terms agreed to by the parties for ending the tenancy. The Advocate stated that the Tenant wants to

comply with these terms, and the Agents stated that the Landlord likewise wishes to comply with these terms. As a result, the below settlement was reached.

1. The parties agree that the tenancy will end on February 28, 2022.
2. By exercise of section 37(1) of the *Act*, and as there was no agreement before me between the parties that another time had been agreed to for the end of the tenancy, the Tenant must vacate the rental unit by 1:00 p.m. on February 28, 2022.
3. The rights and obligations of the parties under the *Act* continue until the tenancy ends in accordance with this agreement.
4. The Landlord agrees that the Tenant is only required to remove their belongings from the rental unit, and that no extensive cleaning of the rental unit is required.
5. The parties agree that no rent is to be charged by the Landlord or paid by the Tenant for February of 2022.
6. The Tenant is to return all keys issued to them by the Landlord or their agents in relation to the tenancy.
7. The Landlord agrees to return the Tenant's \$305.00 security deposit, in full, plus the \$35.55 in interest owed, plus the \$15.00 fee paid by the Tenant for keys at the start of the tenancy, once the Tenant has vacated the rental unit. The parties agreed that vacancy of the rental unit is the only condition to be met by the Tenant for the return of these amounts, which total \$355.55.

This settlement agreement was reached in accordance with section 63 of the *Act*.

Conclusion

I order the parties to comply with the terms of their mutually settled agreement described above.

In support of the settlement described above, and with the agreement of the parties, I grant the Landlord an Order of Possession, effective 1:00 P.M. (Pacific Time) on February 28, 2022. This Order of Possession must be served on the Tenant 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.

In support of the settlement described above, and with the agreement of the parties, I grant the Tenant a Conditional Monetary Order in the amount of \$355.55. Once the Tenant has vacated the rental unit, this Order must be served on the Landlord as soon

as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims 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 *Residential Tenancy Act*.

Dated: February 2, 2022

Residential Tenancy Branch