

Decision

Dispute Codes: OPT, O, FF

Introduction

This hearing dealt with an application by the tenant for an order of possession, an order instructing the landlord to comply with the Act, in addition to recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony. All of the evidence was carefully considered.

Issues to be decided

- Whether the tenant is entitled to any or all of the above under the Act

Background and Evidence

Pursuant to a written agreement entered into by the parties, a unit was made available to the tenant for the fixed term of his employment from December 1, 2009 to April 30, 2010. Rent in the amount of \$540.00 is payable in advance on the first day of each month.

By letter dated February 4, 2010, pursuant to a conversation between the parties earlier on that same date, the landlord formally advised the tenant that his employment “is terminated effective immediately.” In this letter the tenant is further informed, in part:

Upon observation of your work performance, we have determined that your actions are incompatible with continued employment.

In this letter, the tenant is also told that he must vacate the unit “by 3 pm tomorrow, February 5, 2010.” Subsequently, while the tenant left his possessions in the unit, he temporarily departed from the unit before returning there which is where he presently resides.

Arising from the notice of termination of employment, and what is also effectively a notice to end tenancy dated February 4, 2010, the tenant seeks an order of possession effective to March 31, 2010. Additionally, the tenant seeks an order instructing the landlord to comply with the Act where it concerns provision of notice to access the unit. Finally, the tenant seeks to recover the \$50.00 filing fee for his application.

While the parties explored options for resolving the dispute during the hearing, their efforts did not lead to a resolution of the matter.

Analysis

Section 48 of the Act speaks to **Landlord's notice: end of employment with the landlord**, and provides in part as follows:

- 48(3) A notice under this section must end the tenancy effective on a date that is
- (a) not earlier than one month after the date the tenant receives the notice,
 - (b) not earlier than the last day the tenant is employed by the landlord, and
 - (c) the day before the day in the month, or in the other period on which the tenancy is based, that rent, if any, is payable under the tenancy agreement.

Based on the documentary evidence and testimony of the parties, I find that notice to end the tenancy on February 5, 2010, which was given by way of letter dated February 4, 2010, does not comply with the above statutory provisions.

Section 53 of the Act addresses **Incorrect effective dates automatically changed**, and provides in part as follows:

- 53(3) In the case of a notice to end a tenancy, other than a notice under section 45 [*tenant's notice: landlord breach of material term*], 46 [*landlord's notice: non-payment of rent*] or 50 [*tenant may end tenancy early*], if the effective date stated in the notice is any day other than the day before the day in the month, or in the

other period on which the tenancy is based, that rent is payable under the tenancy agreement, the effective date is deemed to be the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement

- (a) that complies with the required notice period, or
- (b) if the landlord gives a longer notice period, that complies with that longer notice period.

Pursuant to all of the above, I find that the effective date of the notice to end tenancy dated February 4, 2010, is March 31, 2010. Accordingly, I hereby grant an order of possession in favour of the tenant effective immediately and up until not later than 1:00 p.m., Wednesday, March 31, 2010.

Further, I order the landlord to comply with the provisions set out in section 29 of the Act which addresses **Landlord's right to enter rental unit restricted**, as follows:

29(1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

Finally, as the tenant has succeeded in this application, I find he is entitled to recover the filing fee by way of withholding \$50.00 from the next regular payment of monthly rent.

Conclusion

Pursuant to all of the above, I hereby issue an order of possession in favour of the tenant effective immediately and up until not later than **1:00 p.m., Wednesday, March 31, 2010.**

I order that the tenant may recover the filing fee by way of withholding \$50.00 from the next regular payment of monthly rent.

DATE: February 19, 2010

Dispute Resolution Officer