



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPE

Introduction

This matter dealt with an application by the Landlord for an Order of Possession for End of Employment.

The Landlord said she served the Respondent with the Application and Notice of Hearing (the "hearing package") by posting it to the door of the Respondent's unit on May 25, 2011. The Respondent's lawyer said they did not get the full package as they only received the Notice of a Dispute Resolution Hearing and they did not receive the application and supporting documents. In the absence of any evidence to the contrary, I accept the Landlord's testimony that the hearing package was served on the Respondent and based on the evidence of the Landlord, I find that the Respondent was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both the Landlord and the Respondent were in attendance.

At the start of the hearing the Respondent's lawyer said pursuant to the Residential Tenancy Policy Guideline 27 they believe the Residential Tenancy Branch does not have jurisdiction as the Respondent has an ownership interest in the property that is more than a tenant and therefore no tenancy exists.

The Landlord's lawyer said the issue of ownership will be decided in BC Supreme Court in the future, but at the present time the Respondent was employed by the Landlord and part of the employee agreement was the use of the rental unit; therefore the Residential Tenancy Branch does have jurisdiction and a tenancy was established.

In addition both parties submitted evidence that was not accepted for the hearing as the evidence packages were submitted late so neither party had time to prepare a response to those submissions.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

Background and Evidence

The Landlord said this tenancy started in July, 2003 when she hired the Respondent to be the caretaker of her rental unit. The Landlord said she provided a rental unit and a monthly wage for the Respondent as compensation for his time and work. The Respondent said he was paid by the Landlord the equivalent of the rent from one rental unit each month. The Respondent said the payments started at \$500.00 and then increased to \$700.00 and he received the payments from the Landlord. The Respondent continued to say he did not pay for his rental unit because he owned it. The Landlord continued to say that she ended the employment arrangement with the Respondent on March 1, 2011, because he was not fulfilling his employment obligations and he was breaking the rules of the rental unit. The Landlord's lawyer said the Landlord is requesting an Order of Possession because the Respondent is living in the rental unit, the employment arrangement has ended and the Landlord has a new caretaker that she wants to move into the caretaker's rental unit. For these reasons the Landlord said she issued a 1 Month Notice to End Tenancy for End of Employment, dated April 29, 2011, on April 29, 2011 by personal delivery to the Respondent. The Notice has an effective vacancy date of May 30, 2011.

The Respondent's lawyer said the Respondent and the Landlord have had a marriage like relationship since 1996 and the Respondent contributed funds to the purchase of the rental complex in July, 2003 when the Landlord purchased the complex; therefore the Respondent has an interest that is more than a tenant and that the Respondent is a partial owner of the property. If this is the case then the Residential Tenancy Branch has no jurisdiction. The Landlord's lawyer said the land title is registered in the Landlord's name only. The Respondent's lawyer continued to say that she has filed a Civil Claim in the Supreme Court of British Columbia seeking to prove the Respondents ownership of the property.

I questioned the Respondent and the Respondent's lawyer why they did not file an application to dispute the Notice to End Tenancy for End of Employment within the 10 days after receiving the Notice as the information is given on the Notice. The Respondent's lawyer said they were unaware of the time line to make the application and were in error not to have made it. The Landlord's lawyer said the Respondent accepted the Notice to End Tenancy as indicated on the Notice when the Respondent did not dispute the Notice within the 10 day time limit.

The Respondent and the Respondent's lawyer said they understood this now, but at the time they didn't realize what they had to do to dispute the Notice.

Analysis

I have reviewed the testimony of both parties and the evidence that was submitted on time for the hearing by the Landlord. As the Respondent did not submit any evidence on time there is no written evidence to support the Respondents position. In addition the Respondent had opportunity to dispute the Notice to End Tenancy, but he did not. Consequently I find that the Respondent has not established grounds to prove that he has an interest in the property that was more than a tenant or an employee. In addition the Landlord has established that there was an employment arrangement with the Respondent and the Respondent confirmed this by providing the amounts that he was compensated for his time and work at the property. The end of employment was also confirmed by both the Landlord and the Respondent. The Landlord said the employment arrangement ended on March 1, 2011 and the Respondent said it ended in January, 2011.

Section 48 (1) says a landlord may end the tenancy of a person employed as a caretaker, manager or superintendent of the residential property of which the rental unit is a part by giving notice to end the tenancy if

- (a) the rental unit was rented or provided to the tenant for the term of his or her employment,
- (b) the tenant's employment as a caretaker, manager or superintendent is ended, and
- (c) the landlord intends in good faith to rent or provide the rental unit to a new caretaker, manager or superintendent.

I find that the Landlord has established that the employment arrangement existed with the Respondent and that it has now ended and that she wants to move a new caretaker into the caretakers unit. As well, I find the Respondent has not proven that he has an interest in the property that is more than a tenant or employee and he did not dispute the Notice to End Tenancy therefore he is presumed to have accepted the Notice to End Tenancy pursuant to section 48 (5) of the Act.. Consequently I find the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenant/Respondent.

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant has been issued to the Landlord. A copy of the Order must be served on the Tenant: the Order of Possession may be enforced in the Supreme Court of British Columbia.

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*.

Residential Tenancy Branch