



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNE, CNC

Introduction

This matter dealt with an application by the tenant to cancel a Notice to End Tenancy because her employment with the landlord has ended and for cause.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was sent by registered mail to the landlord on August 24, 2011. The landlord was deemed to be served the hearing documents the fifth day after they were mailed as per section 90(a) of the *Act*.

Both parties appeared, gave sworn testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly sworn evidence presented at the hearing I have determined:

Issue(s) to be Decided

Is the tenant entitled to cancel the Notice to End Tenancy?

Background and Evidence

Both parties agree that this month to month tenancy started on January 01, 2010. Rent for this unit is \$650.00 per month which is due on the 1st day of each month.

The landlords' legal counsel states the landlord entered into a casual labour agreement (copy provided) with the tenant. This agreement states the tenant will work 120 hours a year carrying out light general farm work. The agreement also states the tenants rent will be reduced to \$400.00 per month to reflect the value (consideration for) the casual work and the agreement may be terminated by either party with 30 days written notice.

The landlords' legal counsel states the rental of this cottage was tied to the employment of the tenant for this casual work and the work agreement was terminated in writing on June 30, 2011 effective on July 31, 2011. The landlords' legal counsel states the landlord now needs to employ a farm labourer to do more of the farm work due to his ill health and requires vacant possession of the rental unit to house this farm worker. The landlord has to have vacant possession before he can start to look for a new person to take this position.

The landlords' legal counsel states the landlord served the tenant with a letter to terminate her employment and tenancy however realized he must give her a proper notice so served the tenant with a One Month Notice to End Tenancy on August 12, 2011 by registered mail. This Notice has an effective date of September 15, 2011 and the reason given on the Notice is the tenants rental unit is part of an employment arrangement that has ended and the unit is needed for a new employee.

The landlord has requested the Notice be upheld and seeks an Order of Possession at the hearing.

The tenant testifies this was not an employment arrangement. Based on the definition of rent under the *Residential Tenancy Act (Act)*, the tenant did some light duties around the farm in lieu of rent. The tenant testifies this was not an employment as she received no wages and paid no taxes. The tenant states she is still available to do any work for the landlord. The tenant states the landlord did not serve her with a proper notice when she first got the termination letter. The tenant agrees she did get proper notice from the landlord on August 12, 2011 and filed her application to cancel the notice on August 22, 2011.

The tenant testifies she has lived on this property for 16 years and has done work for the landlord whenever he required it. The tenant states her former partner had an agreement with the landlord for work on the farm when they lived in a different rental unit on the property. However she states when this relationship ended she rented this rental unit from the landlord and that's when she entered into this casual labour agreement.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. The tenant argues that this was not a proper employment as recognized by employment law. In this matter I do not have jurisdiction in employment matters and have based my decision on the *Residential Tenancy Act*.

I have considered the tenants argument that she was not employed by the landlord for wages. The tenant agrees she did sign a casual labour agreement and agrees she did carry out light farm work for the landlord in lieu of rent. This reduced rent is an amount paid reflective of the work done. Consequently it is my decision for the purposes of this *Act* that there was an employment arrangement in place between the parties. However, s. 48 (1) of the *Act* states:

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 have reviewed the casual labour agreement and find this agreement does not specify that the rental unit is rented or provided to the tenant for the term of her employment. It only states that this agreement can be terminated with 30 days Notice. It also does not specify that the tenant is employed as a caretaker, manager or superintendent of the landlords and although an employment arrangement was in place it does not fall within the criteria accepted under the *Act* for ending the tenancy for cause. I further find the landlord has provided no evidence to show that the landlord intends in good faith to rent or provide the rental unit to a new caretaker, manager or superintendent. It is therefore my decision that the agreement entered into does not reflect the terms the landlord now seeks to enforce. Consequently, I find in favour of the tenants application to cancel the One Month Notice to End Tenancy.

Conclusion

The tenant's application is allowed. The One Month Notice to End Tenancy for Cause dated, August 12, 2011 is cancelled and the tenancy will continue

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: September 26, 2011.

Residential Tenancy Branch