



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy. Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, to call witnesses, and to make submissions to me.

Issue(s) to be Decided

The issue to be decided is whether the Notice to End Tenancy, served pursuant to section 48 of the *Residential Tenancy Act (Act)*, should be set aside.

Background and Evidence

The Landlord and the Tenant agree that the Tenant has resided in the rental unit for many years and that the Landlord purchased the residential property in August of 2011. The Agent for the Landlord did not dispute the Tenant's testimony that he moved into the building in 1987.

The Landlord and the Tenant agree that a 1 Month Notice to End Tenancy was served on the Tenant which declared that the Tenant was required to vacate the rental unit by September 30, 2011. The reason for ending the tenancy that is cited on the Notice to End Tenancy is that the tenant's rental unit/site is part of an employment arrangement that has ended and the unit/site is needed for a new employee.

The Witness stated that he is the former owner of the residential property; that the Tenant had been a long time tenant in the rental unit; that in September of 2007 he employed the Tenant to do occasional maintenance work on the residential property; that in February of 2010 the Tenant also assumed responsibility for collecting the rent; that he always paid the Tenant on an hourly basis; and that his wages were not deducted from his rent; and that his employment was not connected to his tenancy agreement.

The Agent for the Landlord stated that the Landlord wishes to employ an on-site building manager; that the Landlord does not intend to employ the Tenant; that the Landlord has concerns that the Tenant will undermine the authority of the new on-site

manager, which is based on the Landlord's previous experience at other rental units; that the Landlord wishes to use this rental unit to house the on-site manager; that the only vacant units in the residential are being renovated and will not be ready for approximately three months; and that the Tenant was clearly an employee of the former Landlord even if his wages were not deducted from his rent.

The Tenant contends that his employment at the residential complex is not related to his tenancy; that he would never undermine the authority of a new manager; and that the rental unit was not provided to him as a term of his tenancy agreement.

Analysis

Section 48(1) of the *Act* stipulates that 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 the rental unit was rented or provided to the tenant for the term of his or her employment, the tenant's employment as a caretaker, manager or superintendent is ended, and 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 failed to establish that the rental unit was rented to the tenant for the term of his employment. In reaching this conclusion I was heavily influenced by the undisputed evidence that the Tenant was residing in the rental unit long before he became an employee. I was further influenced by the testimony of the former landlord, who clearly stated the employment was not related to the tenancy. In my view there is no evidence that would cause me to conclude that the Tenant could only remain in the rental unit for the term of his employment.

As the Landlord has not established that the rental unit was provided for the term of the employment, the Landlord does not have the right to end this tenancy simply because the Tenant's employment has ended.

Conclusion

As I have determined that the Landlord does not have grounds to end this tenancy pursuant to section 48(1) of the *Act*, I hereby set aside the One Month Notice to End Tenancy and I order that this tenancy continue until it is ended in accordance with the *Act*. 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 27, 2011.
