



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a One Month Notice to End Tenancy.

The Tenant's Application for Dispute Resolution was amended at the hearing to reflect the proper name of the Landlord.

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, and to make relevant submissions to me.

The Tenant stated that he served the Dispute Resolution Package and a copy of the Notice to End Tenancy to the woman who is caring for the Landlord at the home where the Landlord is currently residing, although he cannot recall the date of service. The Agent for the Landlord stated that the Landlord gave the aforementioned documents to the Agent for the Landlord on January 05, 2012.

The Agent for the Landlord stated that he left a package of evidence for the Tenant on a table outside the Tenant's rental unit on January 05, 2012. The Tenant stated that he did not receive these documents until January 10, 2012.

The Agent for the Tenant requested an adjournment to give the Tenant time to respond to the evidence provided by the Landlord. He stated that if an adjournment was granted the Tenant would submit evidence of the type of work the Tenant has done for the Landlord.

The Tenant's request for an adjournment was denied, as I concluded that the type of evidence the Tenant wished to introduce would not be likely be relevant to my decision in this matter. The Tenant was advised that if, during the hearing, it became apparent that the evidence he wished to introduce would be relevant to my decision I would reconsider the application for an adjournment.

Issue(s) to be Decided

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

Background and Evidence

The Tenant stated that he moved into the rental unit on October 21, 2008, which was not disputed by the Agent for the Landlord.

The Landlord and the Tenant agree that the Tenant was permitted to live in the rental unit without paying rent in exchange for yard and building maintenance.

The Landlord and the Tenant agree that a One Month Notice to End Tenancy was posted on the door of the rental unit. The Agent for the Landlord stated that he posted the Notice on December 16, 2011. The Tenant cannot recall when he located the Notice. The Notice to End Tenancy declared that the Tenant must vacate the rental unit by January 16, 2012. The reason cited on the Notice for ending the tenancy is that the Tenant's unit is part of an employment arrangement that has ended and the unit is needed for a new employee.

The Agent for the Landlord does not believe that the Landlord and the Tenant discussed what would happen if the Tenant's employment with the Landlord ended. The Tenant agrees that the parties did not discuss what would happen if his employment ended.

The Agent for the Landlord stated that in 2010 he began managing two properties owned by the Landlord, including the rental unit and that he now does much of the work that was previously done by the Tenant. He stated that he believes the Landlord informed the Tenant that he would be managing the building but he does not know if the Landlord told the Tenant that the Agent for the Landlord had authority to act as the Tenant's employer.

The Tenant stated that the Landlord told him that the Agent for the Landlord would be collecting rents for the properties and that he told the Tenant their employment arrangement would continue. He stated that the Landlord never told him that the Agent for the Landlord was acting as the Tenant's employer.

I note that there is no evidence from the Landlord that indicates the Agent for the Landlord had the authority to act on behalf of the Landlord in relation to the employment arrangement between the Landlord and the Tenant.

The Agent for the Landlord stated that in August of 2011 he verbally advised the Tenant that his employment with the Landlord had ended. The Tenant stated that sometime in September of 2011 the Agent for the Landlord told him that his employment had ended however he ignored that information as he had never been informed that the Agent for

the Landlord was acting as his “boss”. He stated that he has made several attempts to contact the Landlord but he has been unable to contact him recently regarding his employment.

The Agent for the Landlord stated that on October 11, 2011 he posted a letter on the Tenant’s door, in which the Agent for the Landlord informed the Tenant that his services were no longer required. The Tenant stated that he did not receive this letter until he received the Landlord’s evidence package in regards to his hearing.

The Landlord and the Tenant agree that the Landlord has never personally advised the Tenant that his employment has ended.

The Landlord and the Tenant agree that the Tenant provided the Landlord with a variety of invoices for work the Tenant did at the rental unit. The Agent for the Landlord stated that the Landlord interpreted this to mean that the Tenant wished to change the terms of the original employment agreement.

The Agent for the Tenant stated that the invoices were provided to the Landlord, in part, because the Tenant’s labour exceeded the value of the rent for the rental unit. The Tenant stated that that the invoices were provided to the Landlord for supplies used to complete a variety of repairs.

Analysis

On the basis of the undisputed evidence presented in evidence, I find that the Tenant maintained the rental unit in exchange for free rent. I therefore find that he was employed by the Landlord as a caretaker.

On the basis of the undisputed evidence presented in evidence, I find that a One Month Notice to End Tenancy, served pursuant to section 48 of the *Act*, was posted on the Tenants door on December 16, 2011, which declared that the Tenant must vacate the rental unit by January 16, 2012.

Section 90(c) of the *Residential Tenancy Act (Act)* stipulates that a document that is posted on a door is deemed received three days after it is posted. I therefore conclude that the Notice to End Tenancy that was posted on the door on December 16, 2011 was received by the Tenant on December 19, 2011.

Section 48(3) of the *Act* stipulates that a Notice to End Tenancy served pursuant to this section must end the tenancy effective on a date that is not earlier than one month after the date the notice is received and the day before the day in the month that rent is payable under the tenancy agreement and on a date that is not earlier than the last date the tenant is employed by the landlord. As the Tenant received this Notice on December 19, 2011, and rent is not payable, I find that the effective date of the Notice to End Tenancy is January 19, 2011.

Section 48(1) of the *Act* stipulates that a landlord may end the tenancy of a person employed as a caretaker, manager, or superintendant if the rental unit was rented or provided to the tenant for the term of his or her employment; that the tenant's employment as a caretaker, manager, or superintendant has ended; and the landlord intends in good faith to rent or provide the unit to a new caretaker, manager, or superintendant.

I find that the Landlord has failed to establish that the Landlord has ended the Tenant's employment as a caretaker. In reaching this conclusion I was heavily influenced by the absence of any evidence that shows the Landlord personally ended the tenancy, verbally or in writing. I was further influenced by the absence of evidence from the Landlord that indicates the Agent for the Landlord had the authority to end the Tenant's employment. In the absence of evidence that the Agent for the Landlord had the authority to end the Tenant's employment, I cannot conclude that the Landlord ended the Tenant's employment when the Agent for the Landlord told the Tenant that his employment was ending.

Conclusion

As I have found that the Landlord has failed to establish that the Tenant's employment as a caretaker has ended, I find that the Landlord has not established that it has grounds to end this tenancy pursuant to section 48(1) of the *Act*. I therefore grant the Tenant's application to set aside the Notice to End Tenancy. This tenancy shall continue until it is ended in accordance with the legislation.

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: January 12, 2012.

Residential Tenancy Branch