Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, OPC, MNDC, FF

Introduction

This Application for Dispute Resolution by the tenant was seeking to cancel a One-Month Notice to End Tenancy for Cause dated July 28, 2012 and effective August 31, 2012. The hearing was also convened to hear the landlord's application seeking an Order of Possession based on the One-Month Notice to End Tenancy for Cause issued on the basis that the tenant's employment with the landlord has been terminated and the suite occupied by the tenant must be used to house a new manager. The landlord was seeking a monetary order for $1,400.00 rent owed for August 2012, now that the tenant was no longer an employee who was provided with a suite rent-free.

Both parties appeared and gave testimony in turn.

Issue(s) to be Decided

Should the One-Month Notice to End Tenancy be cancelled or enforced?

Is the landlord entitled to monetary compensation?

Background and Evidence

The landlord testified that the tenancy began in 2007 and the tenant was charged a security and key deposit of $600.00. According to the landlord, the tenant agreed to take on the building manager job and to occupy the suite that was set aside for this employee. No written tenancy agreement or employment contract was created. The landlord testified that the suite was normally valued at $1,200.00 per month at that time, but the tenant fulfilling the role as caretaker was offered the use of the unit rent-free. The landlord testified that, over time, no rent increases were issued to the tenant because he was occupying the suite as an employee of the landlord. However, according to the landlord, the suite that the tenant occupies is now valued at $1,400.00.

The landlord testified that the tenant's employment was terminated and the expectation is that the tenant must now move out of the building manager's suite because the landlord is seeking to employ another caretaker and needs the suite back for that

purpose. The landlord testified that this was the reason that the One-Month Notice to End Tenancy for Cause was issued. The landlord's position is that the tenant must vacate on August 31, 2012, but in the meantime the tenant must pay full rent valued at $1,400.00 to occupy the suite.

The tenant testified that he originally answered an ad to rent a suite in the building. According to the tenant, at that time, the units were valued at $1,000.00 per month and he paid a security deposit of $500.00 plus $100.00 for the various keys. The tenant testified that after he negotiated his tenancy, and before they moved in, he was subsequently offered a job as building manager because the current employee had serious health issues.

The tenant testified that once he agreed to take on the job they moved into the suite formerly occupied by the building manager and lived rent-free as part of his remuneration. The tenant stated that there was never a dedicated suite reserved specifically for the care-taker and that any other suite can be used to house the building manager. According to the tenant, historically building managers have lived in other suites The tenant testified that, in fact, the landlord has recently designated another occupant living in the building to be the on-site manager at this time. The tenant pointed out that his suite has no distinctive features that would make it more suited to a building manager's residence and also pointed out that a stand-alone office was created for the purpose of conducting the administrative business of the complex.

The tenant's position is that, when his employment was terminated, he reverted to his former status as a normal tenant and he should be charged $1,000.00 rent for the suite because there has never been any official rent increase issued to him by the landlord.

Analysis

Section 48(1) of the Act provides 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:

> (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.

Section 49 (4) of the Act states that a notice under this section must comply with section 52 *[form and content of notice to end tenancy]*. And Section 49(5) provides that a tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice. The tenant disputed the Notice within the statutory deadline under the Act.

In this instance, the tenant has testified that, although a suite was provided for the term of his employment, he had already contracted under a tenancy agreement to become a tenant before he accepted the position of building manager. The tenant also raised questions about the good faith intention of the landlord to reserve this specific unit solely for the use of a new manager.

I find that the verbal terms being disputed by the parties are tenancy terms that would need to be detailed in a written tenancy agreement under the Act.

I also find that the employment terms, in order to be interpreted, should also be documented in a written contract to avoid uncertainty. However, I only have jurisdiction to deal with tenancies. Other contracts, such as employment or service contracts are outside my authority to determine.

Section 13 of the Act requires that a landlord prepare in writing every tenancy agreement entered into and within 21 days the landlord must give the tenant a copy of the agreement. The Act also specifies that a tenancy agreement must comply with the Act and regulations and set out standard terms as well as:

- the correct legal names of the landlord and tenant;
- the address of the rental unit;
- the date the agreement is entered into and the tenancy starts;
- the address for service and telephone number of the landlord or agent;
- the agreed terms about whether the tenancy is for a fixed term or periodic tenancy
- the amount of rent payable and whether it rent varies with the number of occupants
- what day in the period that the rent is due;
- which services and facilities are included in the rent;
- the amount of any security deposit or pet damage deposit and the date the security deposit or pet damage deposit was or must be paid. (my emphasis)

I find that in this instance, the landlord did not comply with the Act and failed to create a written tenancy agreement containing the above data. That being said, according to the Act, oral terms contained in verbal tenancy agreements may still be recognized and enforced. Section 1 of the Act, defines “tenancy agreement” as follows:

> ***"tenancy agreement"*** *means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;*

If verbal terms are not disputed, I find that there is no reason they cannot be enforced.

In support of that, I find that section 6 of the Act states that the rights, obligations and prohibitions established under the Act are enforceable between a landlord and tenant under a tenancy agreement and that a landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58 (1) *[determining disputes]*.

Section 58 of the Act states that, except as restricted under the Act, a person may make an application for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of: (a) rights, obligations and prohibitions under this Act; (b) rights and obligations under the terms of a tenancy agreement that (i) are required or prohibited under this Act, or; (ii) relate to the tenant's use, occupation or maintenance of the rental unit, or common areas or services or facilities. (my emphasis)

Although I have delegated authority under the Act to determine and enforce tenancy agreements and even verbal tenancy terms, section 6(3) of the Act states that a term of a tenancy agreement is not enforceable if ; (a) the term is inconsistent with this Act or the regulations, (b) the term is unconscionable, or (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it. (my emphasis)

I find that any time the nature or existence of a verbal term is disputed, it will likely be found to be unclear and therefore cannot be enforced.

Section 16 of the Act states that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

I find that the tenancy relationship began in June 2007. According to the documentary evidence on file, the landlord offered the tenant a job as “Building Manager” and confirmed employment in a letter dated July 12, 2007 to commence “on or before July 15, 2007”.

Therefore, I find as a fact that a tenancy agreement was made between these two parties before the landlord ever offered the tenant a job as building manager. It follows that tenancy rights and responsibilities under the Act took hold at that time and I find that the tenant’s acceptance of the building manager job did not function to extinguish his pre-existing tenancy rights under the Act.

I find that the landlord is not at liberty to terminate this tenancy merely because the employment contract has ended. I find that the landlord has already contracted with a temporary replacement manager living elsewhere in the building. I find that the landlord did not provide sufficient evidence to show that there was a proven basis for his position that the suite occupied by this tenant is exclusively dedicated for the use of a building manager.

Given the above, I find insufficient evidence to prove that the One-Month Notice to End Tenancy was warranted and I find it must be cancelled. I find that, once the employment position was terminated, the tenant reverted back to a normal tenancy under the terms negotiated and agreed-upon by the parties in June 2007.

I find that the tenant's security deposit and a deposit paid at the start of the tenancy for keys are both still being held in trust by the landlord.

While there are disputed verbal terms form the two parties with respect to what the rental rate started out as and what it should be now, I find that the absence of a written tenancy agreement, leaves this question to be resolved by the Act.

Section 17 of the Act states that a landlord is entitled to require that a tenant pay a security deposit as a condition of entering into a tenancy agreement or as a term of a tenancy agreement and section 19(1) of the Act restricts the landlord from accepting a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.

With respect to the rental rate of the unit, I find that it appears that the monthly rate was initially set at $1,000.00 per month based on the $500.00 security deposit charged at the start of the tenancy.

In regard to the landlord's argument that the value of the rental unit would have naturally escalated from its original rate to the current market rate of $1,400.00, I find that there is no provision for this concept in the Act. In fact section 42 of the Act states that a landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

> (a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;
>
> (b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

This section of the Act goes on to say that a landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase and that the notice of a rent increase must be in the approved form. These restrictions apply, even if the tenant agreed in writing to accept a higher rent increase than the Regulations allow.

I find as a fact that the landlord has never issued a valid and compliant rent increase to this tenant. Accordingly, I find that the rate for the tenant's rental unit is still $1,000.00 per month and payment of this rent must commence as of September 1, 2012.

I dismiss the landlord's application for an Order of Possession based on the One-Month Notice to End Tenancy, as the Notice must be cancelled. The landlord's monetary claim is also dismissed as premature.

Conclusion

I hereby dismiss the landlord's application in its entirety without leave.

Based on the evidence, I hereby order that the One-Month Notice to End Tenancy dated July 28, 2012 be cancelled and of no force nor effect .

I further order that the monthly rental rate for this unit is $1000.00 per month and will remain at that rate, unless and until a valid and compliant Notice of Rent Increase is issued and served.

I find that the tenant is entitled to be reimbursed for the cost of filing this application in the amount of $50.00 and the tenant will deduct this amount as a one-time abatement from the next rental payment owed to the landlord.

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: August 28, 2012.

Residential Tenancy Branch