



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, OPT, LRE, FF,

Introduction

This hearing was convened by way of conference call in response to an application made by the tenant for the following: to cancel a notice to end tenancy for cause; to obtain an Order of Possession for the rental suite; for money owed or compensation for damage or loss under the Residential Tenancy Act (referred to as the *Act*), regulation or tenancy agreement; to suspend or set conditions on the landlord's right to enter the rental unit and to recover the filing fee from the landlord for the cost of the application.

The landlord appeared for the hearing and the tenant appeared with an advocate. No issues in relation to the service of documents under the *Act* were raised by the parties.

At the start of the hearing the tenant explained that she was still residing in the unit and withdrew her portion of the application requesting an Order of Possession. During the hearing, the tenant also withdrew her monetary claim and as a result, I dismiss this portion of the application with leave to re-apply.

In relation to the tenant's request to suspend or set conditions on the landlord's access to the rental suite, the landlord and tenant came to a mutual agreement under Section 63 of the *Act* as the dispute was over which door the landlord was required to use to post documents under the *Act*. The landlord and tenant agreed that if the landlord intended to serve documents under the *Act* by posting them to the door, they would be posted on the external side door which leads to the stairwells of the house.

The tenant was permitted under Section 11.5 of the Rules of Procedure, to provide a copy of the notice to end tenancy during the hearing. The landlord and tenant both provided documentary evidence in advance of the hearing and affirmed testimony during the hearing.

However, during the conclusion of the hearing the landlord exited the conference call hearing without permission. The landlord was given 20 minutes to dial back into the hearing and during this time I waited to receive the tenant's additional evidence; no further discussions about the issues applied for were discussed with the tenant after the landlord exited the call to the time it was concluded.

Only the relevant portions of the evidence relating to the issues below have been considered and documented in this decision.

Issue(s) to be Decided

- Has the tenant established that the notice to end tenancy ought to be cancelled?

Background and Evidence

Both parties confirmed the tenancy started on February 1, 2013 on a month-to-month rental of a basement suite. No written tenancy agreement was completed but rent was established by the landlord and tenant in the amount of \$600.00 payable on the first day of each month and included all utilities, cable, and use of the garage. The suite was provided to the tenant fully furnished. The landlord did not take a security or pet damage deposit from the tenant at the start of the tenancy.

The landlord testified that she had a verbal agreement with the tenant to pay a reduced rent amount of \$600.00 per month for her basement suite and that it was reduced to this amount at the start of the tenancy in exchange for occasional pet care to be done by the tenant when she was away. The landlord testified that she resided in the upper part of the house and planned to move away.

As a result, she no longer required the tenant to look after her pets and as a result, after trying to reach a mutual agreement with the tenant, served the tenant personally with a 1 Month Notice to End Tenancy for Cause on September 23, 2013. The notice was provided as evidence for this hearing and states that reason for ending the tenancy is because the tenant's rental suite is part of an employment arrangement that has ended and that the suite is needed for a new employee. The expected date of vacancy on the notice is October 31, 2013.

The tenant testified that she was not an employee of the landlord and had no employment contract with the landlord on which the tenancy was based. The tenant testified that it was her mother that came over to the house to look after the landlord's pets whilst she was away; this occurred on two or three occasions and was not routine. The tenant testified that the landlord had requested her mother to look after her pets in June, 2013 whilst she was out of town but gave her mother little notice. The tenant testified that her mother was unable to look after the landlord's pets as her mother had to look after her own pets. As a result, the tenant, as a favour to her mother, stepped into help by looking after the landlord's pet and watering the gardens; but this was only on one occasion and to help her mother out. The tenant denies having any discussion about employment arrangements with the landlord.

Analysis

I have examined the notice to end tenancy served by the landlord to the tenant and I find that the contents on the approved form comply with the requirements of the *Act*. I also find that the tenant applied to dispute the notice within the time limits afforded to the tenant under the *Act*.

Section 48 (2) of the Act states, an employer may end the tenancy of an employee in respect of a rental unit rented or provided by the employer to the employee to occupy during the term of employment by giving notice to end the tenancy if the employment is ended.

In this case, I find that the landlord has failed to establish that there was an employer and employee relationship between the tenant and the landlord. The tenant and landlord did not complete an employment contract and I find that there is not sufficient evidence before me to show that the tenancy was established based on an employment arrangement. The tenant and landlord together established the monthly rent amount at the start of the tenancy which has remained unchanged throughout the tenancy. It appears from the landlord's evidence that she assumed that by claiming to ask the tenant to perform services, that this determined the monthly rent amount at the start of the tenancy. However, if the landlord does not require these services, it is not sufficient in this case for a landlord to end a tenancy based on the end of an employment arrangement as no employment arrangement existed. As a result, I cancel the notice to end tenancy and the tenancy continues until it is ended in accordance with the *Act*.

As the tenant has been successful in cancelling the notice to end tenancy, the tenant is entitled to recover the filing fee for the cost of the application. As a result, the tenant is able to deduct \$50.00 from her December, 2013 rent in satisfaction of this award.

Conclusion

For the reasons set out above, I cancel the 1 Month Notice to End Tenancy for Cause issued by the landlord to the tenant on September 23, 2013.

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: November 13, 2013

Residential Tenancy Branch

