



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FILBERG HERITAGE LODGE AND PARK ASSOCIATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPE, CNC, FF

Introduction

This hearing dealt with cross applications for dispute resolution, filed by each of the parties.

The Tenant applied on May 13, 2014. The Tenant seeks an order cancelling a Notice to End Tenancy issued by the Landlord on May 5, 2014, and to recover the filing fee for the Application.

The Landlord applied for an order of possession of the rental unit. The Landlord claims the rental unit was provided to the Tenant for the term of his employment and the employment has now ended, therefore, the tenancy must end (the "Notice"). I note that the effective date indicated on the Notice is June 6, 2014, which is dealt with below.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the Notice to End Tenancy valid or should it be cancelled?

Background and Evidence

Pursuant to the rules of procedure section 11.1, the Landlord provided evidence on the Notice first.

The Agents for the Landlord testified that the Tenant's employment ended with the Landlord on May 5, 2014. The Agents testified that the Tenant was served with the Notice in person on May 5, 2014.

The Agents testified that the cottage was provided at a reduced rate of rent for the use of the Tenant while he was employed as a caretaker at the park by the Landlord. The Agents testified that now the employment has ended the rate of rent increased pursuant to the written tenancy agreement between the parties. The Agents testified that the Tenant has not been paying all the rent due. I note neither party supplied a copy of the written tenancy agreement in evidence; however, neither party was disputed any of the terms in the tenancy agreement. Apparently there has been a Notice to End Tenancy for unpaid rent issued to the Tenant; however, that issue was not before me.

The Agents explained that the cottage was built by the original owners of the property for the use of their caretaker at the park. The park is owned by a local municipality and is run by a board of directors. The park consists of approximately nine acres of gardens.

The Agents further testified they have hired another caretaker. They testified this is on a temporary basis, as the park requires that the caretaker reside in the rental unit provided and the Tenant is still occupying the cottage.

They testified that after they served the Tenant with the Notice, the Tenant requested an extension of time to vacate. The Agents testified that the board of directors considered the request and refused to extend the time.

The Tenant testified that he received the Notice on May 5, 2014. He testified he has not found a job and has no money to move. He testified he has been lucky to get two or three hours of work per day. He has not found a place to live.

The Tenant testified he has applied for employment insurance, although he has received no benefits as of yet. He testified he has not paid the full rent due, as he has no money saved and no current job.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

I find the Tenant has failed to prove the Notice should be cancelled. I dismiss the Application of the Tenant without leave to reapply. Although the Tenant is in a difficult position with little money and no job, financial hardship is not a ground to cancel a Notice to End Tenancy under the Act.

Under section 48 of the Act, the Landlord may end a tenancy if the rental unit was rented or provided to the term of their employment, the employment has ended, and the Landlord intends in good faith to provide the rental unit to a new caretaker.

I accept the testimony of both the parties that the employment of the Tenant with the Landlord ended on May 5, 2014, and the rental unit was provided during the employment of the caretaker. I accept the testimony of the Agents that the Landlord is required to provide the cottage to the caretaker of the park and that a new caretaker has been hired on a temporary basis pending the move into the rental unit.

I note that the effective date of the Notice was too early and should have been dated for June 30, 2014. Nevertheless, an incorrect effective date does not invalidate the Notice, since under section 53 of the Act the effective date of the Notice automatically corrected to June 30, 2014, the earliest correct date.

For these reasons, I find that the Notice is valid and should not be cancelled. The Agents for the Landlord consented that the order of possession could be effective for July 15, 2014.

Therefore, I allow the Application of the Landlord and grant an order of possession effective on **July 15, 2014, at 1:00 p.m.**

This order must be served on the Tenant and may be enforced through the Supreme Court of British Columbia, with a court appointed bailiff.

Conclusion

The Notice to End Tenancy is valid and should not be cancelled. Financial hardship by the Tenant is not grounds to cancel the Notice under the Act. The Tenant's Application for Dispute Resolution is dismissed without leave.

The Landlord's Application is allowed and the Landlord is granted an order of possession effective at **1:00 p.m. on July 15, 2014.**

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: July 07, 2014

Residential Tenancy Branch

