



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Horizon Towers Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNL, FF
OPL

Introduction

This hearing was scheduled in response to the tenant's application for cancellation of a 2 month notice to end tenancy for landlord's use of property / and recovery of the filing fee. Both parties attended and / or were represented and gave affirmed testimony. Affirmed testimony was also given by witnesses for the landlord.

During the hearing the landlord made an oral request for an order of possession in the event the tenant's application does not succeed. This request is also included in the landlord's documentary submission.

Issue(s) to be Decided

Whether either party is entitled to the above under the Act, Regulation or tenancy agreement.

Preliminary Matters

After approximately 35 minutes into the hearing the tenant's agent inquired whether the dispute resolution proceeding was being recorded. He was informed that it was not. He then reported that he was making his own recording. He was informed that this was not permitted and he was duly ordered to cease. Momentarily, he then reported that he had stopped recording.

The parties are informed of Rule of Procedure # 9.1, which speaks to **Private Recording**:

Private audio, photographic, video or digital recording of the dispute resolution proceeding is not permitted.

Background and Evidence

The 2 bedroom unit which is the subject of this dispute is located within a complex comprised of 2 buildings. Pursuant to a written tenancy agreement entered into by the parties on April 21, 2011, what is a month-to-month tenancy began on May 01, 2011. The unit number identified on the tenancy agreement is followed by the letters "RCSR," an abbreviation which designates the unit for occupancy by a "Resident Customer Service Representative."

Prior to the start of tenancy, the tenant had entered into an employment relationship with the landlord on February 01, 2005. At that time the tenant resided elsewhere in accommodation not affiliated with the employer. Later, the tenant moved into the subject unit pursuant to the tenancy agreement noted above.

The tenant's employment was terminated effective May 29, 2014, at such time as ownership of the complex changed hands. While the current owner / landlord offered employment to the tenant, the tenant did not thereafter become an employee of the landlord. Nevertheless, the tenant presently still resides in the unit designated for occupancy of a "Resident Customer Service Representative."

Further to the tenancy agreement, the parties entered into a "Resident Customer Service Representative (Full - Time) Responsibilities Agreement," which sets out certain terms and conditions of employment. Terms include a "\$500.00 taxable rental benefit per month which will be deducted from the total compensation per month." As the tenant is no longer employed by the landlord, the tenant pays monthly rent of \$500.00.

The landlord's witness, "DB" was employed by the original owner / landlord. "DB" testified that the landlord inadvertently failed to issue a notice to end tenancy when the tenant's employment ended. Such notice, he testified, would have been issued pursuant to section 48 of the Act which addresses **Landlord's notice: end of employment with the landlord.**

Thereafter, pursuant to section 49 of the Act which addresses **Landlord's notice: landlord's use of property**, the new / current landlord issued a 2 month notice to end tenancy dated August 01, 2014. The notice was served by way of posting on the unit door on August 05, 2014. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is October 31, 2014. The reason identified on the notice in support of its issuance is as follows:

The landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property

The tenant filed an application to dispute the notice on August 18, 2014.

The landlord claims that the unit is required for a couple currently employed by the landlord. The landlord testified that a condition of their employment is that a 2 bedroom unit will be provided. The couple are said to be living in a 1 bedroom unit, pending the anticipated availability of the subject unit. The landlord further testified that there are not currently any other 2 bedroom units available in the building within which the subject unit is located, and that there were not any other 2 bedroom units available in that same building at the time when the 2 month notice was issued.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, forms and more can be accessed via the website: www.gov.bc.ca/landlordtenant

Section 49 of the Act addresses **Landlord's notice: landlord's use of property**, and provides in part:

49(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

(e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;

Residential Tenancy Policy Guideline # 2 speaks to "Good Faith Requirement when Ending a Tenancy," and provides in part:

A claim of good faith requires honesty of intention, with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy.

Section 55 of the Act addresses **Order of possession for the landlord**, in part:

55(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of

possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

Based on the considerable documentary evidence submitted by the parties, the affirmed testimony given during the hearing, in addition to the relevant statutory provisions and Guidelines, my findings are set out below. These findings neither reference each and every aspect of the multiple issues raised in correspondence and email exchanges between the parties, nor each and every aspect of the multiple issues raised by the parties during the hearing, although all aspects in both were duly considered.

I find that the terms of the employment relationship between the parties and the terms of the tenancy, are set out variously and in concert in the following documents:

Tenancy Agreement

Schedule "A" of the Tenancy Agreement

Resident Customer Service Representative (Full-Time) Responsibilities Agreement

Resident Customer Service Representatives – Attachment A

I find that the unit currently occupied by the tenant is designated for use and occupancy of employees of the landlord. While the tenant was formerly in an employment relationship with the original landlord at the time when tenancy began on May 01, 2011, that employment relationship ended on or about May 29, 2014 when ownership of the 2 building complex changed.

Under the heading, **Possession of CSR Suite** in the "Resident Customer Service Representatives – Attachment A," it is stated as follows:

Once employment is terminated (for any reason), occupancy in a Customer Service Representative suite is terminated and you will have 7 days to vacate your suite, in accordance with the Residential Tenancy Act. Should you not vacate your suite within the required time period, you will be charged market rent on a prorated basis for each additional day that the suite is occupied.

Despite the above provision, the original landlord did not issue a notice to end tenancy as a consequence of the end of the employment relationship with the tenant, and the

tenant has continued to reside in the “CSR Suite.” While an offer of employment was made by the current landlord, I find that the tenant did not subsequently enter into an employment relationship with the current landlord. In the result, having now hired employees who will live on-site, the landlord seeks possession of the “CSR Suite,” shown on the subject tenancy agreement as 603B (RCSR). Following from these circumstances the landlord issued the 2 month notice to end tenancy for landlord’s use of property dated August 01, 2014.

I am satisfied that the 2 month notice was issued in accordance with the Act, and that the landlord has met the burden of proving “good faith intent” for ending the tenancy. Accordingly, the tenant’s application to cancel the 2 month notice is hereby dismissed, and I find that the landlord has established entitlement to an order of possession.

As the end of tenancy nears, the attention of the parties is drawn to the following particular sections of the Act:

Section 37: **Leaving the rental unit at the end of a tenancy**

Section 38: **Return of security deposit and pet damage deposit**

Section 51: **Tenant’s compensation: section 49 notice**

Conclusion

The tenant’s application for cancellation of the 2 month notice, in addition to recovery of the filing fee is hereby dismissed.

I hereby issue an **order of possession** in favour of the landlord effective not later than **November 30, 2014**. This order must be served on the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

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: October 20, 2014

Residential Tenancy Branch

