Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cannae Holdings ULC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNE, CNC

Introduction

The tenants applied for an order to set aside a Notice to End a Residential Tenancy dated September 14, 2015 for cause setting the end of tenancy for October 31, 2015. Both parties attended the hearing. The landlord admitted service of the tenants' application for dispute resolution. The parties admitted that they had each exchanged their respective evidence. Based on the landlord's evidence I find that the tenants were served with the Notice to End the Tenancy for cause on September 17, 2015 by posting it on the door on September 14, 2015.

Issue(s) to be Decided

Are the tenants entitled to an Order cancelling the Notice?

Is the landlord entitled to an Order for Possession?

Background and Evidence

The landlord's agent IM testified that she offered the tenants employment as Weekend Relief Caretakers commencing on July 1, 2013. IM testified that the unit in question was supplied to the tenants as part of their employment. This was explained to them before they began their employment. IM presented the tenants with an employment agreement on their first day which was marked "draft." In that agreement paragraphs "E" and "I" state:

> E. The employees will reside in suite _____ the designated suite for the Weekend Relief Caretaker. The employees will enter into and sign a Tenancy Agreement for use and occupancy of the suite.
>
> I. Upon termination, the employee shall surrender the suite within 10 business days, providing vacant possession of the suite so provided.

IM testified that the tenants never signed the employment agreement and in fact negotiations continued through December 2014 when another draft agreement was presented to them. They never signed that version either.

IM testified that the tenants did not ever enter into a written tenancy agreement, but the rent required for the occupancy of the unit was $ 1,050.00. IM testified that market rent for that unit was between $ 1,200.00 and $ 1,300.00. IM sated that the tenants' salary was always at least equal to the rental amount and more depending on overtime or extra duties performed.

IM testified that the tenants' employment was terminated on May 29, 2015 but that they refused to move out of the unit. IM hired a new Weekend Relief Caretaker who has been working off site but that she will be required to move into the tenants' suite as soon as it becomes vacant. IM testified that the tenants' suite is essential to the Weekend Relief Caretaker's job because of its proximity to the front lobby and because everyone knows it belongs to the caretaker. The landlord requested an Order for Possession.

BS testified for the tenants that he and his wife were offered employment with the landlord as Weekend Relief Caretakers. They were not told initially that a unit was part of their employment. They were not given a copy of the employment agreement until almost two months after they began their employment and it was marked as "draft". In it they saw paragraphs regarding the unit for the first time. They refused to sign the agreement and received another "draft" copy for signature in December of 2014 at which time they complained in writing to the employer that they were told they must sign it to keep their jobs. BS testified that the tenants did not sign the agreement. BS testified that they had rented a unit for over twenty years before moving to this one and thought that this unit was another rental just like the previous one. He testified that similar units in the building were either at the same rental amount or $ 50.00 to $ 100.00 more. BS testified that he and his wife always pay their rent and wish to continue to reside in the unit notwithstanding that their employment is at an end.

The tenants requested I cancel the Notice to End the Tenancy.

Analysis

The Notice to End a Residential Tenancy relied on section 48(1) of the Residential Tenancy Act. That section provides as follows:

> **48** (1) 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.
>
> (my emphasis added)

By the landlord's own admission the tenants never signed the employment contract. The tenants testified that they did not sign because it was introduced after their employment began and they did not agree with its terms. Therefore, I find that the tenants were not bound by any of the terms of that agreement as it was not agreed to by all of the parties.

What's left to be determined is whether the unit occupied by the tenants was *rented or provided to the tenant for the term of his or her employment.* Section 6(1) and (3) (c) of the Act state as follows:

> 6 (1) The rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement.
> ...
> (3) A term of a tenancy agreement is **not enforceable if**
> ...
> (c) the term is **not expressed in a manner that clearly communicates the rights and obligations under it.**
>
> (my emphasis added)

In this case there is no written employment agreement or written tenancy agreement for the landlord to rely on. There is conflicting evidence as to whether the unit was provided as part of the employment.

I find that the tenants conduct in refusing to sign the agreement, and continuing to pay their rent after their employment was terminated, is consistent with their explanation that they believed they had entered into an ordinary tenancy with the landlord in addition to their employment. I am further not satisfied that the landlord has proven that this unit is unique to the employment as Weekend Caretaker because of its location or because "everyone knows where it is." There is conflicting testimony on the fair market value of the unit. I find the fact that the tenants believed they were paying market price for the unit, supports their version that they did not think the unit was tied in any way to their employment at the time they first occupied it.

The burden of proof on an application for an order for possession for cause rests with the landlord who must on the balance of probabilities establish cause. This onus must be satisfied strictly where the landlord seeks to end a tenancy.

I find that in absence of an employment agreement or a written tenancy agreement clearly specifying that the unit was part of the employment with the landlord, the sum total of the landlord's evidence does not on the balance of probabilities constitute the requirements of section 48 (1) of the Act.

Pursuant to section 6 (3) (c) of the Act I find that I am not prepared to imply or find on the evidence of the landlord that the tenants' unit was supplied as a term of their employment. I find rather, that the parties entered into an ordinary tenancy on July 1, 2013 with monthly rent in the amount of $ 1,050.00.

I therefore find that the landlord has failed to prove cause on the balance of probabilities. I allow the tenant's application and have cancelled the Notice to End the Tenancy.

Conclusion

I have cancelled the Notice to End the Tenancy dated September 14, 2015 setting the end of the tenancy for May 31, 2015. The tenancy is confirmed. The tenants shall recover their filing fee in the amount of $ 50.00. I Order that they be permitted to reduce their next rental payment by that amount without any penalty.

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 23, 2015

Residential Tenancy Branch