



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding B & E Investments Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNE, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy – Section 48; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is there a valid reason for the Landlord to end the tenancy?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

On July 31, 2013 the Parties entered into a manager employment agreement that includes as wages the provision of a discount on rent for the manager. The letter also sets out the unit that will be made available to the manager (the “Tenant”).

On September 28, 2015 the Tenant was given a one month notice to end tenancy (the Notice). The reason stated on the Notice is that the unit is part of an employment arrangement that has ended and the unit is needed for a new employee and contains an effective date of October 31, 2015. On November 25, 2015 the Landlord served the Tenant with a second one month notice to end tenancy for the same reason and with an effective date of January 1, 2016.

The Landlord states that the second notice to end tenancy was given to the Tenant as there was concern that service of the first notice was not sufficient.

The Tenant states that when originally offered the manager position the Tenant was given a choice of three units to reside in. The Tenant states that the unit she chose was never a designated unit for managers. The Tenant provides Witness letters to this effect. The Tenant states that several previous managers lived in unit 101 or any unit that was available. The Tenant states that there are three currently empty units in the building any of which could be used by the new manager.

The Landlord states that the employment agreement is clear that the unit was provided to the Tenant as manager. The Landlord states that the unit currently occupied by the Tenant has been designated as the unit to be provided to the new manager as set out in the employment agreement with the new manager. The Landlord provides a copy of this agreement. The Landlord states that the new manager has been given one of those empty units (unit 114) until the Tenant's unit becomes available. The Landlord states that unit 114 and the Tenant's unit are basically the same except that the Tenant's unit faces the parking lot and the Landlord finds this to be preferable location for the new manager to carry out its job.

Analysis

Section 48 of the Act provides that A landlord may end the tenancy of a person employed as a manager 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.

Although the Notice indicates that the reason for the end of the tenancy is because the unit is needed for a new employee, the use of the word "needed" may be misleading. The Act only requires a good faith intention to provide the unit to the new employee. It does not require a

designation of any particular unit and I do not find that evidence of other available units, on its own, substantiates a lack of good faith in the case at hand. Given the terms of the new manager's employment agreement I find that the Landlord has shown good faith intention to provide the Tenant's unit to the new manager.

While the employment agreement with the Tenant does not positively state that the unit will be made available for the term of the employment, it is clear that the unit is being made available to the Tenant as a manager and not otherwise. This implies quite clearly that the unit was provided to the Tenant for the term of the employment. Finally there is no dispute that the Tenant's employment with the Landlord has ended. As such I find that the Tenant has not substantiated on a balance of probabilities that the Landlord does not have a valid reason to end the tenancy and I dismiss the Tenant's application to cancel the Notice. The Tenant is not entitled to recovery of the filing fee.

Although there may have been some issue with the service of the first notice to end tenancy, I note that the Tenant did not amend the application to dispute the second notice to end tenancy. However as the Landlord served the Tenant with the second notice containing a later effective date I find that this later date of January 1, 2015 is the effective end date of the end of the tenancy.

Conclusion

The application is dismissed.

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: December 03, 2015

Residential Tenancy Branch

