



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PARKWAY HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNE OPE

Introduction:

Both parties attended the hearing and confirmed service of the Notice to End Tenancy dated November 4, 2015 to be effective January 1, 2016 by posting it on the door and personal service of the Application for Dispute Resolution to the lawyer's office. The tenant applies to cancel the Notice to End the Tenancy for End of Employment.

Issues: Is the tenant entitled to any relief?

Background and Evidence:

Both parties were given opportunity to be heard, to provide evidence and to make submissions. The landlord said there were two oral tenancies, one for rent and occupation of the unit and the second for use of storage areas in return for certain caretaking duties and they both commenced about 1979. He said the tenant for the past few years was not performing the duties and he formally terminated his employment relationship with the tenant by letter dated November 4, 2015 and gave him until January 1, 2016 to remove all his items from the storage areas, from the parking lot, the laundry room and boiler room. He also served him a Notice to End Tenancy in order to retake possession of all these areas.

The tenant said he moved into the building in 1982 and paid no rent because the landlord owner of the company is his stepfather. He said the storage areas became available about one and a half years later. He said he did small jobs out of respect, there was no formal employment relationship. He did not expect to live long due to many medical conditions and wanted to spend time with his mother. Now he says his mother has medical issues and the landlord is targeting him for he has never liked him. The tenant referred to some family issues such as an uncle dying and how the landlord had not treated him properly. He said he is in the process of cleaning stuff up but needs more time due to his health issues. He noted the Municipality had visited the premises and had been sending notices to the landlord which were not brought to his attention. He said he is getting a bit better and plans to move to the interior when the weather is better. He cannot afford to rent storage or hire persons to move items.

The landlord said the tenant has many classic cars and other items which he could sell if necessary. He said he needs the storage areas and other common area areas for another caretaker's equipment and his own equipment to take care of the building. He does not want to end the occupation of the tenant of his own unit but needs possession of the other areas which the tenant has taken for his own use. He particularly requires the tenant to remove the tires from the boiler room by January 30, 2016 because of the health and safety issues.

After some discussion and mediation, the landlord agreed to an effective date of April 30, 2016 for an Order of Possession of the other storage areas. The landlord requests an Order of Possession for the 850 sq. ft. storage area on the West side of the building, the fenced portion of the parking lot, the laundry room, the boiler room and the hallway to the meter room. This would require all these areas to be cleared of all belongings of the tenant.

In evidence is a letter from the lawyer terminating employment, the Notice to End Tenancy, statements of the landlord, an invoice from another caretaking company, and many photographs showing areas of storage used by the tenant.

Analysis:

The Notice to End a Residential Tenancy is based on cause pursuant to section 48 of the Act for end of employment. The Act permits a tenant to apply to have the Notice set aside where the tenant disputes it. Although the tenant disputed the Notice in time, I find none of his submissions support his continued use of the storage areas and other common areas for his own purposes. Although the tenant contends this was a family relationship, I find there was a landlord-tenant relationship between the parties which is not negated by a family relationship. I find the landlord's evidence credible and prefer it to the tenant's evidence regarding an employment type relationship. The evidence that the landlord granted him an unusual amount of storage space for cars and equipment in return for certain caretaking duties supports the landlord's evidence. Although the tenant alleged he did the duties out of respect for the landlord, the evidence that he was granted benefits in return support an employment type relationship. I find the discrepancy in statements of the parties regarding dates the tenancy commenced is not relevant. Whether it was in 1979 or 1982, I find does not alter the landlord-tenant relationship and the basic facts.

I find the landlord terminated the employment relationship on November 4, 2015 and served the Notice to End Tenancy because he needs the storage and other spaces for his use and that of other caretakers who maintain the building. I find this is in conformance with section 48 of the Act. I dismiss the application of the tenant to cancel the Notice to End Tenancy. Although the landlord agreed to a later date for possession of the storage areas, I find the storage of tires in the boiler room is a health and safety

hazard and the landlord requires this area to be cleared. I find the landlord entitled to an Order that the tenant clear the boiler room of tires by January 30, 2016.

Section 55(1)(a) provides that the arbitrator must grant an order of possession of the rental area if the landlord makes an oral request for an order of possession at a hearing where an arbitrator has dismissed the tenant's application pursuant to section 48 and has upheld the Notice. The landlord has made this request at the hearing. As a result I grant the landlord an Order for Possession effective April 30, 2016 as he agreed.

Conclusion:

I grant the landlord an Order for Possession effective April 30, 2016. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement. I dismiss the tenant's application without recovery of the filing fee.

I HEREBY ORDER THAT the tenant clear the boiler room of all his tires and other items by JANUARY 30, 2016.

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: January 13, 2016

Residential Tenancy Branch

