



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RP, O

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy dated October 28, 2015.
- b. A Repair Order

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one month Notice to End Tenancy was served on the Tenant by mailing, by regular mail to the mailing address of the tenant. Further I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord carries on business.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the Notice to End Tenancy dated October 28, 2015?
- b. Whether the tenant is entitled to a repair order?

Background and Evidence

The respondent owns a mine in northern B.C. The tenant testified the tenancy began in June 2015 after he entered into an oral agreement with a representative of the landlord

that he could live in the rental unit for a rent of \$800 per month but that the rent would be satisfied with ground maintenance.

The parties produced a tenancy agreement in writing that was signed on June 30, 2015. The tenancy agreement is in the standard form published by the Residential Tenancy Branch. It provided that the rent was \$800 per month commencing June 1, 2015 and the term was month to month.

However, the tenancy agreement contained an Addendum which contained the following provision:

- “5) Grounds Maintenance: In exchange for the monthly rent (\$800) it is agreement that the tenants will maintain the grounds (cut grass & trim borders) of the mine properties in the Village of Fraser Lake.

This agreement excludes the ground maintenance of rented properties with private fenced yards as this is the responsibility of those tenants. Due to the full-time nature of the position during the summer months this is deemed to be sufficient to off-set rent for the year.

I/We hereby acknowledge that I/we have read and understood this Addendum, and I/we agree to comply with it fully. I/we understand that failure to comply with the Addendum constitutes a breach of a material term of my/our Residential Tenancy Agreement and may be cause for ending my/our tenancy.

In case of conflict between the provisions of this Addendum and any other provisions of the Residential Tenancy Agreement, the provisions of this Addendum shall govern.”

There is no dispute that the tenant carried out his duties in a competent manner and the landlord does not take issue with the quality of the tenant's work.

The mine is in the process of closing. In October the mine gave the tenant written notice that his employment was to be ended as of December 31, 2015. The applicant was also given a Notice to End Tenancy

The representative of the landlord acknowledged they are not intending to hire another employee to do the work the applicant is doing.

Grounds for Termination:

The Notice to End Tenancy relies on the following:

- Tenant's rental unit/site is part of an employment arrangement that has ended and the unit/site is needed for a new employee

Analysis:

After carefully considering the evidence I determined the landlord has failed to establish sufficient cause to end the tenancy. The landlord has acknowledged that it has not intention to hiring a new employee and thus there is no need to provide the rental unit to a new employee. As such the landlord failed to comply with the provisions set out in the Notice.

Further I do not agree with the interpretation of the agreement provided by the landlord. The agreement was drafted by the landlord and the law provides that where there is an ambiguity it should be interpreted contra proferentum (against the party that drafted it). The Addendum provides that the applicant is to maintain the grounds in exchanged for the monthly rent (\$800). It further provides that "Due to the full-time nature of the position during the summer months this is deemed to be sufficient to off-set the rent for the year." Finally it provides that in the case of conflict between the provisions of this Addendum and any other provisions of the Residential Tenancy Agreement, the provisions of this Addendum shall govern.

The tenancy agreement provides for a month to month tenancy. However, the Addendum provides that the due to the full time nature of the position during the summer months, this is deemed to be sufficient to off-set the rent for the year. Meaning must be given to this provision as it is to govern where there is a conflict. The only reasonable explanation is the parties agreed that provided the tenant carried out his duties in a competent manner it would offset the rent for the year. The effect of this provision is to turn the term into a fixed term tenancy that ended at the end of May 2016 as the tenant carried out his duties in a competent manner during the summer months.

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord has failed to establish sufficient cause to end the tenancy. As a result I ordered that the one month Notice to End Tenancy dated October 28, 2015 be cancelled. The tenancy shall continue until the end of May 2016 with the rights and obligations of the parties remaining unchanged.

I dismissed the tenant's application for a repair order as the tenant failed to identify which repair he was seeking in his Application for Dispute Resolution and it is not sufficiently connected to the Application to cancel the Notice to End Tenancy.

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 18, 2016

Residential Tenancy Branch

