



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, CNC, CNE, FF, O

Introduction

This hearing dealt with a tenant's application to cancel a 1 Month Notice to End Tenancy for cause and end of employment; repair orders, and other issues. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Procedural Matters

My jurisdiction to resolve disputes is limited to residential tenancy agreements reached between a landlord and tenant. The parties were in agreement that the parties had a tenancy agreement that provided for the tenant to perform work for the landlord in lieu of paying rent. However, the tenant was of the position that the landlord owes her more compensation for the work that she has performed than what has been offset by the value of the tenancy. I declined jurisdiction to make any findings as to whether the landlord owes the tenant compensation for her labour and informed the parties that dispute will have to be resolved in the appropriate forum.

I did not hear or make any findings with respect to the tenant's request for repair orders as I found the tenancy to be at an end.

Issue(s) to be Decided

1. Should the 1 Month Notice to End Tenancy issued on January 1, 2016 be upheld or cancelled?
2. If the Notice is upheld, when shall the Order of Possession be effective?

Background and Evidence

The parties reached a verbal agreement on September 15, 2015. The parties appearing before me were largely in agreement as to what was agreed upon at that time. The agreement was that the tenant would perform caretaking duties at the property and perform renovation work on the rental unit and in exchange the tenant would be provided use and occupation of the rental

unit without paying any rent. The property includes the rental unit that the tenant described as “an old Ranger’s Station”, a four bay shop, and the landlord’s residence. I heard that the tenant’s caretaking duties including cleaning, organizing, painting, general labour, and taking care of the landlord’s residence while the landlord is out of town.

It was undisputed that the landlord fired the tenant for her duties and notified the tenant to cease performing work on the property on December 28, 2015. The tenant stopped providing caretaking duties and renovation work after that date.

It was undisputed that after the tenant was fired the landlord approached the tenant about paying rent for the unit. The tenant did not agree to the landlord’s proposal.

The landlord issued the subject 1 Month to End Tenancy dated January 1, 2016 with a stated effective date of February 1, 2016 (the Notice). The Notice was posted to the tenant’s door and the tenant acknowledged receiving it on January 4, 2016. The Notice indicates several reasons for ending the tenancy; however, the landlord’s agent focused on only one reason, being: *“Tenant’s rental unit/site is part of an employment arrangement that has ended and the unit/site is needed for a new employee.”*

The landlord’s agent submitted that that the tenant’s employment has ended and since there was no agreement that the tenant would pay rent for the unit the tenancy comes to an end with the end of the employment arrangement.

The tenant submitted that the landlord had stated previously that she would never have to move out because of the improvements she has made to the property. The tenant acknowledged that she has not paid any rent for January or February 2016 and was of the view that she should be provided continued occupation of the unit, without paying rent, because landlord owes her more money for the work she has done on the property.

The landlord’s agent countered the tenant’s position by stating the agreement was for possession of the unit without payment of rent only applied only while the tenant was working for the landlord.

The tenant conceded that it is not reasonable to expect that she can reside at the rental unit indefinitely without paying rent. The tenant submitted that she needs more time to vacate the property due in large part to the limited rental availability in the town in which the rental unit is located.

The landlord’s agent was of the position that there are available rental units in their town. The landlord’s agent recognized that the stated effective date on the Notice is incorrect and submitted that it should read February 29, 2016. Given the date of this proceeding, the

landlord's agent submitted that the landlord is agreeable to regaining possession of the rental unit March 15 or 20, 2016. The tenant requested the later date if the Notice is upheld.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, based on a balance of probabilities, that the tenancy should end pursuant to the Notice served upon the tenant. Where there are multiple reasons for ending the tenancy indicated on a Notice it is sufficient to uphold the Notice where only one reason is proven.

The Notice before me indicated a number of reasons for ending the tenancy; however, the only reason explored during the hearing was that the employment arrangement had ended. Accordingly, I focused my analysis on that reason only.

Section 48 of the Act provides for ending of a tenancy where an employment arrangement between a landlord and a tenant has ended. Section 48 includes the following provision:

- (2) An employer may end the tenancy of an employee in respect of a rental unit rented or provided by the employer to the employee to occupy during the term of employment by giving notice to end the tenancy if the employment is ended.

In this case, it was undisputed and I accept that the tenant was provided occupation of the rental unit as part of an employment arrangement since the tenant performed duties for the landlord and the tenant did not have to pay rent and the landlord did not have to pay the tenant wages. Since the parties had no agreement for the tenant to pay rent in exchange for occupation of the rental unit, I further find that the tenant's occupation of the rental unit hinged on the tenant's employment and that it would be unreasonable to expect the tenant to remain in possession of the rental unit without providing rent or duties to the landlord. Accordingly, I find the landlord's position that the tenant's occupation of the rental unit was to be provided during the period of employment as more likely than the tenant's position that she would never have to move. Therefore, I find that when the employment arrangement ended the landlord was in a position to end the tenancy by serving the tenant with a 1 Month Notice to End Tenancy as was done in this case.

It was undisputed that the employment agreement ended pursuant on December 28, 2015. Accordingly, I find the 1 Month Notice issued on January 1, 2016 for end of employment to be valid, with the exception of the stated effective date since less than one full month of notice was provided with the stated effective date, and I uphold the Notice.

An incorrect effective date does not invalidate a Notice to End Tenancy. Rather, section 53 of the Act provides that where an effective date is incorrect the effective date automatically changes to comply.

The Act provides that an effective date is determined as follows:

- (a) not earlier than one month after the date the tenant receives the notice,
- (b) not earlier than the last day the tenant is employed by the landlord, and
- (c) the day before the day in the month, or in the other period on which the tenancy is based, that rent, if any, is payable under the tenancy agreement.

In this case there was no rent payable and I have disregarded part (c) above. The tenant was last employed on December 28, 2015 and received the Notice to End Tenancy on January 4, 2016. Accordingly, I apply part (a) as this is the later date and I find that the effective date could be no earlier than February 5, 2016. Therefore, I accept the landlord's submission that the effective date on the Notice should have read February 29, 2016 since this is more beneficial to the tenant and the effective date is changed to that date.

Section 55(1) of the Act provides that the landlord will be provided an Order of Possession where:

- (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find the Notice to End Tenancy before me is in the approved form and I am satisfied that the Notice meets the form and content requirements of section 52 of the Act. Accordingly, part (a) above is satisfied. Since I have upheld the Notice to End Tenancy I find that part (b) has been satisfied. Therefore, I find the landlord is entitled to receive an Order of Possession.

The effective date of the Notice to End Tenancy has since passed and I provide the landlord with an Order of Possession effective March 20, 2016 as requested during the hearing.

While the tenant is of the position that the value of work she performed exceeds the value of the tenancy she was provided, the tenant is at liberty to seek remedy in the appropriate forum since my jurisdiction to resolve disputes is limited to tenancies and does not extend to employment law.

Conclusion

The Notice to End Tenancy was upheld and the tenant's application is dismissed. The landlord has been provided an Order of Possession effective at 1:00 p.m. on March 20, 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: March 02, 2016

Residential Tenancy Branch