



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE

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 February 18, 2016.
- b. An order suspending or setting conditions on the landlord's right to enter the rental unit.
- c. An order to recover the cost of the filing fee.

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 Notice to End Tenancy was served on the Tenant by mailing, by registered mail to where the tenant resides on February 20, 2016. It is deemed received 5 days later. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on landlord on March 3, 2016. With respect to each of the applicant's claims I find as follows:

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 February 18, 2016 and setting the end of tenancy for March 31, 2016?
- b. Whether the tenant is entitled to an order suspending or setting conditions on the landlord's right to enter the rental unit?
- c. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The representative of the landlord gave the following evidence:

- The tenant was hired as a Manager on September 1, 2013.
- The employment contract provided that she would receive a reduction of rent.
- The parties provided a residential tenancy agreement which that provided that the tenancy began on September 1, 2013 and ended on August 31, 2014 and became month to month after that. The rent was \$850 per month payable in advance on the first day of each month. There is a note on the agreement indicating this was the manager's suite. The tenant was not required to pay a security deposit.
- In April 2014 the tenant rented a second rental unit from the landlord. It provided that the term was for one year commencing April 1, 2014 and ending March 31, 2015. The rent was set at \$1140. The tenancy agreement provided that it was the manager's suite and that no security deposit was required.
- There is an e-mail between the tenant and the then representative of the landlord that states that she had moved to the new rental unit and that her son was living in the rental unit which is the subject of this application.
- In November 2015 the landlord terminated the employment contract with the tenant.
- The landlord filed a claim in the Supreme Court of British Columbia alleging the Tenant misappropriated funds that belonged to the landlord and improperly sub-let unit.
- The landlord served a one month Notice to End Tenancy on the Tenant dated November 27, 2015. The tenant applied to have the one month Notice to End cancelled. The arbitrator declined to consider many of the grounds set out in the Notice because the matter was before the Supreme Court of British Columbia. However, in a decision dated February 1, 2016 he stated:

"It is clear to me and I make the following finding that, based on the extensive documentary evidence submitted by the landlord that suite #209 is in fact the managers' suite and was used as such in the course of the tenants' role as the building manager. The tenants own hand writing reflects the tenancy agreement she wrote up with herself to occupy suite #209 and listed it as the "managers' suite". The tenant remained silent and did not dispute the landlords' claim that suite #410 was rented out to others for as much as \$1900.00 per month. However, the One Month Notice to End Tenancy for Cause does not have the ground that deals with the managers' suite "checked off". I address this for the benefit of both parties and for absolute clarity that the landlord has not issued the

notice on that ground, although referred to on several occasions during the hearing; I need not consider it or make a finding at this time.

In careful consideration of the nine grounds that the landlord has issued the notice on, I have reviewed the chain of events that have transpired, the documentation submitted by the landlord and the testimony of both parties. It's clear to me that there are numerous issues between the two parties however; I find that the majority of those issues relate to an employer – employee relationship. The numerous examples the landlords' counsel referred to her actions and alleged indiscretions as an employee are not sufficient reasons for me to terminate the tenancy. The landlord has not satisfied me that there are sufficient grounds to end this tenancy at this time. I hereby set aside the One Month Notice to End Tenancy for Cause dated November 27, 2015.”

- The representative of the landlord further testified the tenancy relationship has been damaged to such an extent that the termination of the tenancy is necessary. Further, the market rent is \$2100 per month and the tenant is presently paying significantly less. .
- There are 39 rental units in the building. There are 5 vacant units at the present time although other units are in the process of being rent. Three of the vacant units are one bedroom units and two are bachelor units.
- The rental unit which is the subject of this application is the largest one bedroom unit in the rental property.
- Presently, the rental property is being managed on a part time basis by a building manager who lives a short distance away. The landlord has not entered into a contract with the temporary manager as yet pending the resolution of this matter.

The tenant testified as follows:

- The tenant testified she was hired as an independent contractor and she is not an employee. She testified the market rent was \$1250 per month but she received an employee discount of \$400 per month and was required to pay \$850 per month.
- The tenant testified that she moved to the second rental unit in April 2014 and managed the rental property from that unit. Her son moved into the unit which is the subject of this Application. She has since given up the suite and moved back. Her son vacated that unit.
- The tenant stated there is nothing special about this rental unit (that would make it necessary for a manager to move into) and there are other vacant rental units

in the rental property. This rental unit is not designated as the manager's unit. She chose it when she first moved in because of her personal preference. However, it was not used as a manager's suite prior to the tenant taking possession.

- The tenant disputes the allegations set out in the Supreme Court civil claim and denies that she has conducted herself improperly.
- She testified the landlord is conducting monthly inspection and is harassing her in an effort to force her to leave. Her son has moved out of the rental unit which he was living in.
- The tenant presented evidence that she is presenting paying \$1250 per month for the rental unit given she is no longer entitled to the employee discount.

Grounds for Termination:

The Notice to End Tenancy relies on section 48(1) of the Residential Tenancy Act which provides as follows:

Landlord's notice: end of employment with the landlord

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.

(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.

GOOD FAITH REQUIREMENT

Good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage.

A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy. This might be documented through:

- a Notice to End Tenancy at another rental unit;

- an agreement for sale and the purchaser's written request for the seller to issue a Notice to End Tenancy; or
- a local government document allowing a change to the rental unit (e.g., building permit) and a contract for the work.

If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

Analysis:

The landlord has the burden of proof to present sufficient evidence to establish cause to end the tenancy based on the identified cause in the Notice to End Tenancy. After carefully considering all of the evidence I determined the landlord failed to establish sufficient cause for the following reasons:

- I do not accept the tenant's submission that the rental unit she is presently in is not the rental unit that was provided to the tenant for the term of her employment. The written tenancy agreement provides that it was the manager's suite. She obtained a rent reduction for it. It was the unit she moved into. Even if the tenant moved to another rental unit, section 48 applies.
- However, the landlord failed to prove that the landlord intends in good faith to provide the rental unit to a new caretaker, manager or superintendent. The new manager is living in a rental unit a block away from the rental property. The landlord failed to present evidence that the new manager entered into contract with the landlord that provides he is to move into the rental property or the rental unit. Further, there are 5 empty suites in the rental property including 3 one bedroom units. The rental unit in question was not used as a manager's suite prior to the tenant taking possession. The landlord testified the rental unit is larger. However, there is insufficient evidence on which I can determine it is a more appropriate unit.
- I determined the landlord failed to establish it is acting in good faith. The grounds set out in the Notice state that "the Tenant's rental unit/site is part of an employment arrangement that has ended and the unit/site is needed for a new

employee.” However the landlord gave evidence that the market rent is \$2100. There is a dispute on the evidence between what the tenant is presently paying. The landlord testified the tenant is paying \$1440 per month. The tenant’s evidence is that she is paying \$1250 per month per month. I do not think anything turns on this dispute. The landlord also testified the tenancy relationship has been damaged that it is necessary to terminate the tenancy. This evidence indicates the landlord has an ulterior motive which negates the honesty of intent into question.

Determination and Orders:

As a result I ordered that the Notice to End Tenancy be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

I dismissed the tenant’s application for an order suspending or setting conditions on the landlord’s right to enter the rental unit as the tenant failed to prove the landlord’s conduct breached right given to the landlord under the tenancy agreement and Act.

As the tenant has been successful with half of the claims in her application I order that the landlord pay to the tenant the sum of \$50 which is half of the cost of the filing fee such sum may be deduced from future rent.

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: April 10, 2016

Residential Tenancy Branch

