



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Low Tide Properties c/o Hunter McLeod Realty Corp
and [enant name suppressed to protect privacy]

DECISION

Dispute Codes CNE, CNR, FF

Introduction

This hearing was convened by way of conference call concerning an amended application made by the tenant seeking orders cancelling a notice to end the tenancy for unpaid rent or utilities and because the tenant's employment with the landlord has ended.

The tenant and an agent for the landlord company attended the hearing, and each gave affirmed testimony. The landlord's agent was accompanied by another agent of the landlord company who did not participate in the hearing. The parties were given the opportunity to question each other and make submissions. All testimony and evidence of the parties has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

During the course of the hearing the parties agreed that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is cancelled.

Issue(s) to be Decided

The issue remaining to be decided is:

- Has the landlord established that the notice to end the tenancy because the tenant's employment with the landlord has ended was given in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord's agent testified that the current landlord bought the rental complex, which consists of 28 residential units and some commercial units, on September 23, 2015. The tenant was a tenant at the time and a tenancy agreement has been provided showing that the tenancy started on March 1, 2013 on a month-to-month basis for rent

in the amount of \$1,800.00 per month due on the 1st day of each month. However the tenant was getting free rent in exchange for providing services as a caretaker or building management services. The tenant signed a new employment agreement with the current landlord, a copy of which has been provided, and the tenant started paying rent. The employment agreement is dated October 1, 2015. The landlord's agent is not aware of any security deposit or pet damage deposit that may have been collected at any time during the tenancy. There are no rental arrears with the exception of this month, which was due yesterday.

The landlord's agent further testified that on April 29, 2016 he personally served the tenant with a notice to end the tenancy. A copy has been provided and it is dated April 29, 2016 and contains an effective date of vacancy of May 31, 2016. It is a 4-page notice entitled, "Notice To End Tenancy – Residential Unit." The reason for issuing the notice is on page 2, which states: "Section 48 of the RTA (b). – The term of employment of the employee with the Employer is ended. As per the employment agreement the Resident Building Manager is required to surrender and vacate the apartment on Termination of Employment at this location." As far as the landlord's agent knows, the form was extracted off the web which contains the latest notices approved under the *Residential Tenancy Act*. However, it may have been taken from copies that the landlord had on file, and the form has been used in the past.

The landlord's agent also testified that the employment agreement specifies the end of the tenancy at the end of employment. The tenant was released from employment with the landlord because the tenant was not able to carry out the duties in the standard required. The landlord has not received any complaints in writing from tenants in the complex, but from the landlord's perspective the work was not satisfactory. The landlord did not give any written notice to end employment with the tenant, but had to extend the probationary period due to the unsatisfactory performance. A letter from the landlord to the tenant dated December 31, 2015 has been provided which confirms the extension of probation to March 31, 2016. The landlord's agent believes it was mailed to the tenant.

The tenant testified that he did not pay a security deposit or a pet damage deposit at any time during the tenancy.

The tenant also testified that he was totally used and mislead by the landlord's agent, who had no intention of keeping the tenant on as a tenant and dismissed the tenant without cause. The tenant did not receive the December 31, 2015 letter from the landlord and testified that the probationary period ended. On March 10, 2016 the tenant talked to the landlord's agent who told the tenant not to worry about employment and that the landlord would set up medical benefits. A month later, the landlord's agent

approached the tenant and gave him the notice to end the tenancy. There was no warning and there had been no complaints about his performance.

The tenant further testified that the notice to end the tenancy is outdated, and for the landlord to give 30 days notice in this housing market is not justified. Another agent of the landlord emailed the tenant saying he wanted to attend the rental unit to take photographs to put the rental unit on Craigslist to re-rent. The tenant was not very cooperative, and believes the landlord's agents must have realized that they needed to do their homework and could not put a new tenant in the rental unit. If employment was terminated, the tenant would simply become a tenant.

The tenant seeks an order cancelling the notice to end the tenancy testifying that it is not in the approved form.

Analysis

The *Residential Tenancy Act* states that a landlord may end the tenancy of a person employed as a caretaker or manager by giving notice to end the tenancy if the rental unit was rented for the term of the tenant's employment, the employment has ended, and the landlord intends in good faith to rent or provide the rental unit to a new caretaker or manager. It also states:

(4) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

The landlord's agent has no idea where he got the form from, however I agree with the tenant that it is outdated.

I also consider the undisputed testimony of the tenant that one of the landlord's agents advised the tenant in an email that he wanted to take photographs to re-rent the tenant's rental unit after he vacates.

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act*. Considering the outdated notice, and considering the questionable good faith of the landlord, I am not satisfied that the landlord has established that the notice to end the tenancy was given in accordance with the *Residential Tenancy Act*, and I hereby cancel it.

Since the tenant has been successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee. I hereby order that the tenant be permitted to reduce rent for a future month by that amount or may otherwise recover it.

At the conclusion of the hearing, the landlord's agent questioned the unpaid rent that was due yesterday, and I advised the parties to await this Decision. Having cancelled the notice to end the tenancy, and having granted an award for recovery of the filing fee in favour of the tenant, I order the tenant to pay rent in the amount of \$1,800.00 for the month of June, 2016, or may reduce that amount to \$1,700.00. If the tenant fails to pay rent for June in one of those amounts within 3 days of the landlord receiving this Decision, the landlord will be at liberty to serve a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and the *Residential Tenancy Act* applies.

Conclusion

For the reasons set out above, the notice to end the tenancy dated April 29, 2016 is hereby cancelled and the tenancy continues.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the tenant be permitted to reduce rent for a future month by that amount or may otherwise recover it.

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: June 02, 2016

Residential Tenancy Branch