



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EQUITABLE REAL
[tenant name suppressed to protect privacy]

DECISION

Dispute codes CNE FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of a 1 Month Notice to End Tenancy For End of Employment, pursuant to section 48.
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

The tenant's application was filed within the time period required under the Act.

Issues

Should the landlord's 1 Month Notice to End Tenancy For End of Employment be cancelled? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The parties entered into a Resident Caretaker Employment Agreement on October 1, 1999 which stipulated the terms of the employment agreement between the parties commencing on October 15, 1999. The tenant was employed in a full-time position and received a monthly salary of \$1609.00 per month. The tenant occupied the designated Resident Caretaker suite as one of the terms of his employment. The Employment Agreement was renegotiated on February 24, 2015 and the tenant was employed as the Resident Relief Caretaker. This was still a full-time position for which the tenant received a salary of \$2000.00 per month. The tenant continued to occupy the same suite at a rent of \$750.00 per month.

The Employment Agreement stipulated that in the event of the termination of the employee or in the event the employee resigns from his position, the employee is to vacate the resident Caretaker's designated suite at the expiration of one calendar month's written notice.

Effective, October 20, 2015 the tenant retired from his employment with the Landlord. The tenant was provided with a severance package upon retirement which was communicated to the tenant in writing on October 21, 2016. In this letter, it was stated to the tenant that he will be entitled to continue the tenancy of his residence however on the prevailing market rates, the terms of which are to be set out in a tenancy agreement to be provided.

On June 27, 2016 the tenant was issued a 1 Month notice to End Tenancy as the landlord was intending to provide the rental unit to a new caretaker. The landlord provided a copy of the Employment Agreement entered into with the new Resident Caretaker commencing September 1, 2016. The tenant acknowledged service of the 1 Month Notice to End Tenancy.

The landlord argues that since the termination of the employment contract, a new tenancy agreement was not entered into with the tenant and he continued to reside in the caretaker's suite at the same rent he was paying as a caretaker. There was no security deposit collected from the tenant. The landlord submits that they should be granted an order of possession as they now require the caretaker's suite for the new Resident Caretaker. The landlord submits that the tenant did not enter into a tenancy agreement as he did not wish to pay the prevailing market rate. The landlord allowed the tenant to continue to stay at the caretaker rate to provide him some time to find alternative suitable accommodations.

The tenant argues that the 1 Month Notice to End Tenancy should be set aside as he was told by the landlord that he could continue to stay in the caretaker's suite after his employment ended. The tenant submits he was not told anything about a new caretaker being employed and requiring the suite.

Analysis

Pursuant to section 48(1) of the Act, 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.*

The facts of this case are not in dispute and it is agreed to by the parties that the rental unit was rented or provided to the tenant for the term of his employment which ended effective October

20, 2015. The landlord has also submitted evidence that they intend in good faith to rent or provide the rental unit to a new caretaker which was not disputed by the tenant. Rather the tenant argues that he was told he could continue his tenancy after his employment ended and that a regular tenancy was created.

I dismiss the tenant's claim as there was no new tenancy agreement entered into after the termination of the employment contract. I find the landlord only offered to continue the tenancy at the prevailing market rates, the terms of which were to be set out in a new tenancy agreement. A new agreement was not reached or entered into by the parties.

The tenant's application to cancel the 1 Month Notice is dismissed and the landlord is entitled to an Order of Possession pursuant to section 55 of the Act.

As the tenant was not successful in this application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application from the landlord.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: August 15, 2016

Residential Tenancy Branch