



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNE OLC FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on November 3, 2015. The Tenant filed seeking an order to cancel a 1 Month Notice to end tenancy for end of employment; to order the Landlord to comply with the *Act*, Regulation, and/or tenancy agreement; and to recover the cost of the filing fee.

The hearing was conducted via teleconference and was attended by two agents for the corporate Landlord (Landlords), both Tenants, and the Tenants' Advocate. Each person gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process; however, each declined and acknowledged that they understood how the conference would proceed.

The application listed one corporate landlord as the respondent; however, that landlord was represented by two agents during this proceeding. Therefore, for the remainder of this decision, terms or references to the Landlord importing the plural shall include the singular and vice versa, except where the context indicates otherwise

On November 7, 2016 the Tenants submitted 60 pages of evidence to the Residential Tenancy Branch (RTB). The Tenants affirmed they served the Landlord with copies of the same documents, albeit in two packages instead of one. The Landlords acknowledged receipt of these documents and no issues regarding service or receipt were raised. As such, I accepted the Tenants' submission as evidence for these proceedings.

On November 10, 2016 the Landlord submitted 44 pages of evidence to the RTB. The Landlord affirmed that they served the Tenants with copies of the same documents that they had served the RTB. The Tenants acknowledged receipt of these documents and

no issues regarding service or receipt were raised. As such, I accepted the Landlord's submissions as evidence for these proceedings.

Both parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

- 1) Has the Landlord submitted sufficient evidence to uphold the 1 Month Notice (the Notice) issued September 20, 2016?

Background and Evidence

The Tenants have occupied the rental unit since June 1, 2004. Rent of \$500.00 is payable on or before the first of each month. On June 1, 2004 the Tenants paid \$250.00 as the security deposit.

The Tenants submitted evidence that effective June 3, 2011 the female Tenant became an employee of the previous owner. Her position was a "resident caretaker" for which she was paid a semi-monthly wage, as supported by the Record of Employment (ROE) issued to her when she was laid off. The Tenant's employment ended on June 9, 2016, as per that ROE.

The new owner purchased the property effective June 9, 2016. As per the evidence, the new owner issued the Tenant a letter on July 28, 2016 informing her that that because she occupied the suite as part of her past employment and her services as a caretaker were no longer required, she was given a notice to vacate the premises.

On September 20, 2016 the new owner (the new corporate Landlord) issued the Tenants a 1 Month Notice to end tenancy for end of employment. That Notice was issued on the prescribed form, pursuant to section 48 of the *Act*, listing an effective date of October 31, 2016 and the following reason:

Tenant's rental unit/site is provided by the employer to the employee to occupy during the term of employment and employment has ended.

[Reproduced as written]

The Landlords submitted that the Tenants were provided their rental unit at a cost that was below market value rent as part of their employment contract. They pointed to a

letter submitted into evidence issued by the former owner which was dated June 8, 2016 and which stated in part:

I can confirm that both [female and male Tenants' names and suite numbers] employment compensation included below-market rent as part of the terms of their employment.

[Reproduced as written]

The Landlords argued that now that the Tenant's employment has ended she is no longer entitled to a rent that is below market value. As such they are seeking for them to either move out or agree to a rent increase up to \$2,300.00 per month which they have determined to be fair market value.

The Building Manager testified he already resides in the building in a different unit. He stated that there is only one building manager for that building and he is currently in that position.

The Tenants argued that section 48 of the *Act* stipulates that a landlord may end the tenancy of a person employed by a caretaker if: (a) the rental unit was provided to the tenant for the term of his or her employment, (b) the tenant's employment has ended; and (c) the landlord intends in good faith to rent or provide the rental unit to a new caretaker.

The Tenants submitted that they have never been an employee of the Landlord who issued the 1 Month Notice that is currently in dispute; they have occupied the unit since June 1, 2004, prior to their employment with the previous owner; and the current Landlord does not intend to have the caretaker occupy their suite.

In closing the Landlords asserted the Tenant's employment ended June 9, 2016 the same day they took ownership and the same day they wrote the Tenant a letter offering her the ability to stay for fair market value rent or to move out. The Landlords confirmed that if the Notice was upheld they intent to place the unit up for rent to a new tenant for fair market value.

Analysis

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*. After careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

I confirm that the Tenants read Section 48(1) of the *Act*, into evidence correctly, as it is transcribed above. However, the 1 Month Notice in question was issued pursuant to section 48(2) of the *Act* which states:

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.

[Reproduced as written]

In this case I accept the Tenants' evidence that they have never been employed by this Landlord. I further accept that the Tenant(s) had occupied the rental unit since 2004, several years prior to becoming an employee of the former landlord.

Furthermore, upon review of the June 8, 2016 letter issued by the former owner/landlord, I find that letter is not evidence that the unit was provided to the Tenants for only the term of their employment. Rather, I find that letter is evidence that the Tenants' rent, during their employment, was "below-market rent", as part of their compensation.

Thirdly, by their own submissions, the Landlords confirmed their intent was simply to increase the rent to fair market value and not to evict the Tenants due to their former employment ending. I find there was insufficient evidence to warrant me issuing the Landlords an order to comply with the *Act*, Regulation or tenancy agreement. That being said, I caution the Landlords that if they continue to issue unfounded notices to end tenancy the Tenants may be entitled to monetary compensation for loss of quiet enjoyment.

Based on the totality of the evidence before me, I find the Landlords submitted insufficient evidence to prove the reason of the 1 Month Notice. Accordingly, the 1 Month Notice issued September 20, 2016 is hereby cancelled, and is of no force or effect. This tenancy shall continue until such time as it is ended in accordance with the *Act*.

Section 72(1) of the *Act* stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Tenants have partially succeeded with their application; therefore, I award recovery of the filing fee in the amount of **\$100.00**, pursuant to section 72(1) of the Act.

The parties are reminded of the provisions of section 72(2)(a) of the *Act*, which authorizes a tenant to reduce his rent payments by any amount the director orders a landlord to pay to a tenant, which in these circumstances is \$100.00.

Conclusion

The Tenants were successful with their application and the 1 Month Notice issued September 20, 2016 was cancelled. The Tenants were awarded recovery of their filing fee.

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: November 23, 2016

Residential Tenancy Branch