



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, O

Introduction

On September 26, 2016, the Tenant submitted an Application for Dispute Resolution asking that a 1 Month Notice to End Tenancy for Cause dated August 8, 2016, ("the 1 Month Notice") be cancelled and that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities be cancelled (the 10 Day Notice).

The hearing was scheduled as a teleconference hearing. The Landlord and Tenant appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenant provided the Residential Tenancy Branch (RTB) with documentary evidence prior to the hearing. At the start of the hearing the Tenant testified that she did not provide the Landlord with a copy of the documentary evidence. The Tenant testified that she did not know that she was required to provide her evidence to the Landlord. The Landlord confirmed that she has not received any of the Tenant's documentary evidence.

The Residential Tenancy Branch Rules of Procedure requires an Applicant to serve each respondent with a copy of the Application and any other evidence submitted to the RTB. The Notice of Hearing provides general information including that evidence must be given to the other party before the hearing. Since the Landlord has not received any documentary evidence from the Tenant, I find that it would be unfair to the Landlord for me to consider the Tenant's documentary evidence. The Landlord has not has an opportunity to consider the evidence or to prepare to respond to it. Consequently, the Tenant's documentary evidence will not be

considered in this hearing. The Tenant was informed that she can provide testimony regarding the evidence that is excluded.

The Tenant amended the Application for dispute resolution on November 4, 2016. The Tenant's Application does not include a monetary amount. The Residential Tenancy Branch Rules of Procedure 2.3 gives an Arbitrator discretion to dismiss unrelated claims with or without leave to reapply. Since the most important issue to determine is whether or not the tenancy will continue, the Tenants request for a monetary order is dismissed with leave to reapply.

Issues to be Decided

- Does the Landlord have cause to end the tenancy and is she entitled to an order of possession?
- Should the Notices to End Tenancy be cancelled?

Background and Evidence

Both parties testified that the tenancy commenced in October 2015, as a month to month tenancy. The Tenant pays the Landlord rent in the amount of \$350.00 per month. The Tenant did not pay the Landlord a security deposit.

The Landlord testified that the Tenant is required to perform 20 hours of labour each month in addition to paying rent. The Landlord testified that the Tenant agreed to this term of renting at the start of the tenancy. The Landlord testified that there is no written tenancy agreement.

The Tenant testified that there was never any discussion at the start of the tenancy regarding a requirement for her to perform 20 hours of work each month.

The Tenant testified that she initially did perform the work each month but there was no agreement. The Tenant testified that she performed the work because the Landlord would get upset with her when she would not help out. The Tenant testified that she performed about 20 hours of work per week on her own initiative.

The Tenant testified that she became aware that the Landlord wanted her to work in addition to paying rent.

The Landlord testified that the quality of the tenants work was deteriorating and the Tenant then refused to work. The Landlord testified that the rental unit is used for staff to live in. The Landlord testified that she only rents the rental unit to employees who perform property maintenance. The Landlord testified that she provided the Tenant a warning letter that she is required to work.

The Tenant testified that she never received a warning letter from the Landlord. The Tenant testified that she is aware that the Landlord has rented out the unit previously and charged the tenants rent in addition to requiring the Tenants to work for her.

The Landlord testified that she issued the Landlord a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 22, 2016. The Landlord testified that she the Tenant's failure to perform the required work amounts to a non-payment of rent. The Landlord testified that the Tenant only worked 7 hours and therefore the Tenant owes 13 hours at 10.45 per hour, or \$135.85 for rent.

The Landlord testified that she issued the Tenant a 1 Month Notice To End Tenancy For Cause dated September 19, 2016 (the 1 Month Notice). The reasons for the 1 Month Notice are as follows:

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written Notice to do so.
- Tenant's rental unit/ site is provided by the employer to the employee to occupy during the term of employment and employment has ended.

The details of the cause within the 1 Month Notice states: "*Tenant refuses to work. She quit.*"

The Landlord provided a two page written submission in support of her testimony. The Landlord states that during the past 25 years many people have lived in the barn under a verbal tenancy agreement that they work and/ or pay rent. The Landlord submits that the last rental amount prior to the Tenant was \$550.00 per month. The Landlord submits that the Tenant asked to move into the unit in the barn and said she could only afford to pay \$350.00 per month and the parties agreed to that amount with the condition that she worked 20 hours per month to top up the rent. The Landlord submitted that the Tenant's work, demeanour, and attitude deteriorated rapidly; resulting in the Tenant refusing to do any work.

The Landlord provided a document that lists the dates and describes work that the Tenant performed. The Landlord submits that some of the document is in the Tenant's own hand writing.

The Tenant testified that she is no longer performing work for the Landlord. The Landlord testified that she no longer trusts the Tenant to work for her

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 13 of the Act states that a Landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004. Section 12 of the Act states that the standard terms are terms of every tenancy agreement whether or not the tenancy agreement is in writing.

In the Act, the definition of rent means money paid or agreed to be paid, or value or a right given, or agreed to be given, by or on behalf of a Tenant to a Landlord in return for the right to possess a rental unit.

Section 48 of the Act states that 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.*

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.

I find that the Landlord did not prepare a tenancy agreement in writing as required by section 13 of the Act.

Despite the absence of a written tenancy agreement, I find that the Landlord regularly rents the unit in exchange for work and rent. The Landlord's testimony on this issue was corroborated by the Tenant's testimony.

I find it to be unusual that the Tenant would perform many hours of voluntarily work each month for the Landlord if there was not an agreement in place to do so. The Landlord's documentary evidence of work performed by the Tenant supports the Landlord's claim that there was an oral agreement in place. I find it unusual that the Tenant would provide the Landlord a written account of the work she performed if the work was voluntary.

I find that the Tenant's employment with the Landlord has ended. I find that it is more likely than not that the parties had an oral agreement that the Tenant pay rent and provide work for the Landlord. I find that the Tenant did not honour the agreement to pay rent and perform work. I find that the rental unit was provided to the Tenant with employment as a term of the agreement. Since the Tenant's employment has ended, the Tenant cannot remain in the rental unit.

Since the tenancy is ending for this reason is not necessary to consider the 10 Day Notice.

I dismiss the Tenant's Application to cancel the 1 month Notice dated September 21, 2016.

The effective date of the 1 Month Notice was October 31, 2016.

Under section 55 of the Act, when a Tenant's Application to cancel a notice to end tenancy is dismissed and I am satisfied that the notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession. I find that the 1 Month Notice to End tenancy complies with the requirements for form and content.

Since the effective date of the 1 Month Notice has passed, I find that the Landlord is entitled to an order of possession effective two (2) days after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

The Tenant's application to cancel the 1 Month Notice To End Tenancy For Cause is dismissed. I grant the Landlord an order of possession effective two (2) days after service on the Tenant.

The Tenant has leave to reapply for her monetary claims against the Landlord.

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 22, 2016

Residential Tenancy Branch