



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPE, OPR, MNDC, FF

Introduction

This hearing dealt with a landlord's application for an Order of Possession for end of employment and unpaid rent, and a Monetary Order for unpaid rent, as amended. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

At the commencement of the hearing, I proceeded to confirm service of hearing documents upon each other. The tenant confirmed receipt of the landlord's hearing package and a 1 Month Notice to End Tenancy for Cause dated June 11, 2017 and a 10 Day Notice to End Tenancy for Unpaid Rent dated August 10, 2017. The tenant denied receipt of the landlord's other documentary evidence including the Proof of Service documents and letters written by two other people or a receipt from a vacuum store. The landlord acknowledged that he had not served the tenant with the vacuum store receipt and the Proof of Service documents. The landlord confirmed receipt of the tenant's evidence submission. Accordingly, I have admitted the Notices to End Tenancy and the tenant's submissions into evidence. The landlord was informed that the relevant information contained on the Proof of Service documents and other documents that were not admitted may be described orally during the hearing.

The tenant acknowledged receipt of a 10 Day Notice and confirmed that she did not dispute it. The tenant stated that she understood that the 10 Day Notice would be a matter dealt with at today's hearing. Accordingly, I have considered whether the tenancy has ended pursuant to the 10 Day Notice and I amended the landlord's application to include a request for an Order of Possession for unpaid rent.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to a Monetary Order for unpaid and/or loss of rent and parking?

Background and Evidence

In May 2017 the parties entered into an oral agreement for the tenant to perform management duties at the landlord's rental properties starting on June 1, 2017 ("the first employment agreement"). The tenant's compensation package included occupation of a rental unit that is customarily set aside for the manager and a parking space, free of charge, and payment of \$2,400.00 per month. The landlord did not prepare a written employment contract or tenancy agreement. The tenant took possession of the rental unit and the parking space in the latter part of May 2017.

The parties were in dispute as to whether the tenant ever provided management duties for the landlord and the date she was terminated as manager. The landlord stated the tenant was terminated from management duties on May 31, 2017 and that the tenant never performed any management duties. The tenant stated that she was terminated as the manager on June 9, 2017.

It was undisputed that the landlord posted a 1 Month Notice to End Tenancy for End of Employment ("1 Month Notice") on the tenant's door on June 11, 2017. The 1 Month Notice has a stated effective date of July 31, 2017. The reason indicated on the second page of the Notice is that "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 Cause" section of the Notice is not completed. The tenant did not dispute the 1 Month Notice and had accepted that the tenancy would end at the end of July 2017 until the tenant was subsequently hired/re-hired by the landlord in June 2017 ("the second employment agreement").

The parties provided differing accounts as to what was agreed upon under the second employment agreement. No written employment contract or tenancy agreement was prepared by the landlord at this time either. The landlord stated that he hired the tenant be a cleaner for his rental properties, but that she was not manage the rental properties, for the "same compensation as before". When probed further on this matter the landlord stated that he meant compensation of \$2,400.00 was to be the same at \$2,400.00 per month but that free rent and parking were not to be provided. The

landlord stated that he hired the tenant to be a cleaner because he thought the tenant needed money to move out. The tenant stated that on June 20, 2017 the landlord had her observe him as he did fire inspections in his various rental units and on June 21, 2017 the landlord re-hired her to do management and cleaning duties since there was staff shortage in the cleaning department, starting June 30, 2017. I noted that tenant changed her testimony somewhat to say she the landlord wanted her to do more cleaning than she agreed to and that she only agreed to "help clean". The tenant stated that she compensation under the second employment agreement was the same as under the first employment agreement, meaning she was to be paid \$2,400.00 per month and be provided free rent and parking plus \$2,400.00. Both parties provided consistent testimony that the tenant's second employment agreement was terminated in mid-July 2017 and the tenant produced a copy of a cheque showing she was paid \$1,200.00 by the landlord on July 15, 2017. On July 21, 2017 the landlord then applied for an Order of Possession based on the 1 Month Notice.

The tenant submitted that the 1 Month Notice issued on June 11, 2017 was withdrawn since she was re-hired and the compensation package included occupation of the rental unit and parking space. The tenant stated that she expected another 1 Month Notice to be served upon her when she was terminated the second time in July 2017 and pointed out that the landlord did not file his Application for Dispute Resolution until after the second time she was terminated. The landlord stated he did not withdraw the 1 Month Notice of June 11, 2017, pointing out that a withdrawal is not evidenced by a written documentation.

The tenant did not vacate the rental unit on July 31, 2017 and on August 10, 2017 a 10 Day Notice to End Tenancy for Unpaid Rent was posted to the door of the rental unit. The 10 Day Notice appears to be duly completed. The 10 Day Notice has a stated effective date of August 21, 2017 and indicates rent of \$1,250.00 and \$150.00 was owed as of August 1, 2017.

Both parties provided consistent testimony that payment of rent for the rental unit was never discussed between the parties. However, the landlord is of the position that he should be compensated \$1,250.00 for rent for the month of August 2017 as this is the amount of rent he collects from the rental unit across the hall, and that tenants pay \$150.00 per month for parking spaces. The tenant stated that she understood that the landlord collects \$50.00 for parking spaces but that there was never any agreement for the tenant to pay rent or parking. The landlord did not provide documentary evidence to establish the rent payable for similar rental units or parking spaces.

The tenant acknowledged that she must move out of the rental unit and requested that she be provided occupancy until September 15, 2017. The landlord requested possession of the rental unit as soon as possible.

Analysis

The *Residential Tenancy Act* (the Act) applies to tenancy agreements, rental units and residential property in the province. Under section 1 of the Act, a tenancy agreement includes an agreement that is oral or implied and includes a license to occupy. In this case, the tenant was provided possession of a rental unit as part of an oral employment agreement, which is a license to occupy. Accordingly, I find the parties have an oral tenancy agreement that falls under the jurisdiction of the Act. As the parties were informed during the hearing, my jurisdiction does not extend to employment laws and the reasons for termination of employment are outside of the limited scope of this decision. Rather, my focus was on the dates employment started and ended, the tenant's right to occupy the rental unit under the employment agreement(s), and ending of the tenancy.

Section 48 of the Act recognizes that employment agreements will come to an end or be terminated and that the employee/tenant will have to return possession of the rental unit to the landlord. To bring the tenancy to an end, for end of employment, the landlord must give the tenant one full month of advance notice by completing the approved form and serving it upon the tenant. Upon receipt of a 1 Month Notice, the tenant has 10 days to file to dispute it by filing an Application for Dispute Resolution.

The tenant received a 1 Month Notice for End of Employment dated June 11, 2017 and she did not dispute the 1 Month Notice. However, the tenant argued that the 1 Month Notice was implicitly withdrawn when she was re-hired by the landlord and the compensation package was the same as the first employment agreement, meaning it included possession of the rental unit and parking free of charge. If the compensation package for the second employment agreement was the same as for the first employment agreement I find it logical that the 1 Month Notice would be implicitly withdrawn and that to end the tenancy upon termination of the second employment agreement a second 1 Month Notice would have been required. The landlord was of the position the compensation package for the second employment agreement was not the same as the first in that it did not include free occupation of the rental unit and parking. Unfortunately, the landlord did not reduce either employment agreement to writing and did not prepare a tenancy agreement despite the requirement to do so under

section 13 of the Act and I am left with disputed oral testimony as to the terms of second employment agreement.

In hearing from the landlord I noted that he initially stated that the second employment agreement provided for the “same compensation as before” and only when I requested further confirmation as to what they meant did he expand his testimony to state that free rent and parking were not included as they were before. Given the lack of written employment agreements and the vagueness with which the landlord initially described the compensation for the second employment agreement I find it reasonable that the tenant did interpret the second agreement to include free occupation of the rental unit and parking. Accordingly, I find the tenant’s position that she expected the 1 Month Notice issued in June 2017 to have been withdrawn and that she expected to receive a second 1 Month Notice when she was terminated the second time in July 2017 to be reasonable. Therefore, I find the 1 Month Notice issued on June 11, 2017 was withdrawn and the tenancy did not end on July 31, 2017.

The tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent that was posted on her door on April 10, 2017. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

The tenant did not pay the sum indicated on the 10 Day Notice and did not file to dispute it. Although the tenant was of the position that no rent is payable to the landlord, the opportunity to take that position is by disputing the 10 Day Notice. The tenant acknowledged that she made enquiries with the Residential Tenancy Branch about the 10 Day Notice and that she did not file to dispute the 10 Day Notice. By not taking action to either pay rent or dispute the 10 Day Notice I find the tenant conclusively presumed to have accepted that the tenancy would end and the tenant would have to vacate the rental unit pursuant to section 46(5) of the Act. I have considered the tenant’s position regarding the obligation to pay rent, or not, below in considering the landlord’s monetary claim.

I provide the landlord with an Order of Possession effective August 31, 2017. I have chosen that date since that would have been the effective date on a 1 Month Notice to End Tenancy for End of Employment the tenant was expected to be served upon her in July 2017.

As for the landlord's request for a Monetary Order for unpaid and/or loss of rent and parking I dismiss the claim for the following reasons. I have also accepted, as explained above, that the tenant had a reasonable expectation that the tenant's right to occupation of the rental unit was re-established when she was re-hired and the 1 Month Notice issued on June 11, 2017 was implicitly withdrawn; thus, requiring issuance of a second 1 Month Notice in July 2017 to end the tenancy on August 31, 2017. Where employment comes to an end and the tenancy is ended by way of a 1 Month Notice, the Act does not impose an obligation on the employee/tenant to pay rent for the last month of occupancy. Rather, that obligation would have to be set out in the employment/tenancy agreement and from what I heard from both parties there never was an agreement reached between the parties for the tenant to pay rent or parking to the landlord at the rate of \$1,250.00 per month for rent and \$150.00 for parking, or any other amount. Therefore, I find the landlord failed to establish an entitlement to receive unpaid and/or loss of rent and parking from the tenant in this case.

Conclusion

The landlord is provided an Order of Possession effective at 1:00 p.m. on August 31, 2017 to serve and enforce upon the tenant.

The landlord's monetary claim against the tenant is dismissed.

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 24, 2017

Residential Tenancy Branch