



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Active Pass Auto & Marine Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, RSF, ERP, CNE, RR, MNDC

Introduction

The tenant applies to cancel a one month Notice to End Tenancy dated December 4, 2017. The Notice alleges that the rental unit was provided as a term of the tenant's employment with the landlord and that employment has ended. The tenant also seeks compliance and repair orders regarding heat and water as well as compensation for emergency repairs and a for a rent reduction.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure prohibits unrelated disputes contained in a single application and authorizes an arbitrator to dismiss those unrelated claims. In this circumstance the tenants indicated several matters of dispute in his Application for Dispute Resolution, the most urgent of which is their application to set aside the Notice to End Tenancy. I find that not all the claims on the tenants' Application for Dispute Resolution are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenants' request to set aside the one month Notice and the landlord's request for an order of possession at this proceeding. The balance of the tenants' application is dismissed, with leave granted for him to re-apply.

Both parties attended the hearing, the landlord by its representatives and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Has the Notice in question been given for good cause and in good faith?

Background and Evidence

The rental unit is a two bedroom house located on a property which includes a gas station and some other commercial buildings. The property is located on one of the smaller Gulf Islands.

The tenancy started in December 2013 according to the landlord, October 2012 according to the tenant. There is no written tenancy agreement. The monthly rent is \$700.00.

Mr. P.D. a principal of the landlord, testifies that the tenant had been a good tenant but problems had developed recently. He says the tenant does various jobs for the landlord at the gas station, mostly maintenance jobs. In the fall of 2017 he considers that the tenant's attitude changed. He wasn't helping around the gas station the way he was expected to do and would not let the landlord's agents into the rental unit.

Mr. P.D. says the tenant also did towing jobs for the landlord. He acknowledges that the tenant was never technically an "employee" of the landlord but he's been paid for work he does.

Mr. P.D. says that the zoning on the property requires that the occupant of the rental unit either be the owner of the property or a worker of the owner.

Ms. L.B. is the landlord's agent who ran the gas station associated with the property. She says the agreement with the tenant was a handshake agreement. She says the work the tenant does is largely as a night watchman over the gas station and as a tow truck operator whenever there was a need.

She says that the night watchman position did not pay money but that if the tenant was called out on a tow job he would enter the time in a log book and his rent would be reduced at the rate of \$25.00 per hour. She describes the night watchman position as the tenant simply being there living in the rental unit and that his mere presence would provide security.

Presently she needs a person in the home to act as a watchman and perform maintenance work around the area. There is no longer a towing requirement. The towing business has been sold.

The tenant denies that his tenancy is tied into any employment with the landlord. He admits he did towing work and kept track in the landlord's log book and received reduced rent as a result. He denies being a night watchman. He says that over the tenancy he has been away for lengthy periods commercial fishing, sometimes three months at a time, without affecting any alleged employment with the landlord.

Recently he has had health problems but can still work. He says the new owner of the towing business has hired him.

He doesn't dispute the landlord's bylaw claim but says it's an old bylaw, not enforced.

The tenant produced a doctor's letter which referred to matters the doctor had no personal knowledge of and so I discount the letter on that basis.

In response Ms. L.B. says the tenant didn't go fishing last year.

Analysis

Section 48 of the *Residential Tenancy Act* (the "Act") provides:

48 (1) 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.

(2) 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.

The landlord has put itself in a difficult position by not securing a written tenancy agreement as it is required to do under the *Act*. Without such an agreement the question turns to what the parties agreed to at the time of the making of the tenancy agreement. The evidence is very sparse about what was discussed or agreed to at that time.

While the tenant certainly did work for the landlord and the landlord may have depended on the tenant to provide services, it is far from clear that the parties agreed that the tenant was being offered this accommodation only because he was doing small jobs and/or towing jobs for the landlord.

There is no evidence that any zoning bylaw was discussed at the time the agreement was made.

I think it completely within reason that the landlord might have rented to this tenant thinking he could be of assistance to the landlord's business and the tenant thinking he'd found a place to live with some work on the side, both thinking it a good fit. That scenario would not tie the parties together in the relationship contemplated by s. 48, above.

I find that the evidence does not establish on a balance of probabilities that the rental unit was provided to the tenant as a term of his employment.

Conclusion

The tenant's application is allowed. The Notice to End Tenancy dated December 4, 2017 is hereby cancelled. The tenant is entitled to recover the \$100.00 filing fee for this application and I authorize him to reduce his next rent by \$100.00 in full satisfaction of the 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: February 04, 2018

Residential Tenancy Branch