



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNE, FF

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy for end of employment and for the recovery of the filing fee. . Both parties attended the hearing and had opportunity to be heard.

The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Preliminary Issue: Adjournment of Hearing

At the outset, the tenant requested an adjournment of the proceedings. The tenant stated that she was unsuccessful in finding a lawyer to represent her at this hearing. The landlord opposed the application for an adjournment stating that the matter had been outstanding for over one month and that he required possession of the unit so that he could use it for a new caretaker. However, he did agree to allow the tenant to continue to occupy the rental unit until the end of May 2018, in the event the notice is upheld.

Residential Tenancy Branch, Rules of Procedure, Rule 6.4 sets out the criteria for granting an adjournment:

Without restricting the authority of the arbitrator to consider other factors, the arbitrator must apply the following criteria when considering a party's request for an adjournment of the dispute resolution proceeding:

- (a) the oral or written submissions of the parties;
- (b) whether the purpose for which the adjournment is sought will contribute to the objectives set out in Rule 1;
- (c) whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding;
- (d) the degree to which the need for the adjournment arises out the intentional actions or neglect of the party seeking the adjournment; and
- (e) the possible prejudice to each party.

Rule 6 of the Residential Tenancy Branch Rules of Procedure state that the “Residential Tenancy Branch will reschedule a dispute resolution proceeding if written consent from both the applicant and the respondent is received by the Residential Tenancy Branch before noon at least 3 business days before the scheduled date for the dispute resolution hearing”.

Based on the audit notes on the electronic file, I find that the tenant did contact the Residential Tenancy Branch office on March 14, 2018, to request an adjournment and was given instructions on how to go about getting the written consent of the landlord.

The tenant did not file a copy of the written consent from the landlord into evidence. Accordingly, I find on a balance of probabilities that it is more likely than not that the tenant did not follow up on the instructions given to her, to obtain an adjournment of this proceeding.

Although I considered all the criteria in 6.4, I declined to adjourn the hearing as the tenant received the notice to end tenancy on January 26, 2018 and had ample time to hire legal counsel in time for this hearing on April 04, 2018.

In addition the tenant’s main dispute with the landlord is the reason for the termination of her employment which she alleges is unfair. Since I do not have jurisdiction to make a ruling regarding the termination of the tenant’s employment, I find that the evidence proposed by the tenant regarding the termination of her employment which she would like a lawyer to present, is not relevant to this matter and would not aid in its determination.

I further find that an adjournment would possibly prejudice the landlord by subjecting him to further delay of the proceedings when he claims he needs the unit to house a caretaker. I found that the prejudice to the landlord in the event of an adjournment would be greater than that to the tenant if the hearing proceeded.

Accordingly, I informed the tenant at the hearing that I would not adjourn the hearing and that the hearing would continue as scheduled.

Issues to be decided

Did the landlord serve a valid notice to end tenancy?

Does the landlord have reason to end the tenancy or should the notice to end tenancy be set aside and the tenancy be allowed to continue?

Background and Evidence

The tenancy started in July 1995. A copy of the tenancy agreement was filed into evidence. Terms of the tenancy agreement state:

“Living accommodation provided in return for custodial and watchman duties”
“No notice is required if caretaker is found unsuitable. Caretaker may give immediate notice if he wishes to vacate”

On January 26, 2018, the landlord served the tenant with a letter terminating her employment. Attached to the letter was a notice to end tenancy for end of employment. The notice was also dated January 26, 2018 and had an effective date of March 01, 2018. Neither party filed a copy of the notice to end tenancy but both parties agreed that a valid notice was served on the tenant.

The tenant stated that terminating her employment was in retaliation to a suit filed by her against the landlord, for harassment. The tenant went on at length about the unpleasant conditions she was subjected to and stated that all the landlord's allegations against her were false. The tenant felt she was unjustly fired.

During the hearing I asked the landlord to propose an end date to the tenancy in the event I upheld the notice to end tenancy. The landlord replied that he would be willing to let the tenancy continue to the end of May.

Analysis

Based on the sworn testimony of both parties and the documents filed into evidence I find that the landlord served the tenant with a notice to end tenancy for end of employment with the landlord. I find that the tenant received the notice to end tenancy, on January 26, 2018 and applied to dispute the notice within the legislated time frame of ten days.

Pursuant to s.48 (1) of the *Residential Tenancy Act* a landlord may end the tenancy of a person employed as a caretaker of the property of which the rental unit is a part by giving notice to end the tenancy if:

- a) The rental unit was provided to the tenant for the term of her employment
- b) The tenant's employment as a caretaker is ended and
- c) The landlord intends in good faith to provide the rental unit to a new caretaker.

Pursuant to s.48(2) of the *Residential Tenancy Act*, an employer may end the tenancy of an employee in respect of a rental unit provided by the employer to the employee to occupy during the term of employment, by giving notice to the tenant if the employment is ended

In this case both parties agreed that the tenant's employment ended on January 26, 2018 and that the landlord has a service crew performing the duties of caretaker since that date. The tenant was firm in her testimony that the termination of her employment was unfair.

Regarding the tenant's claim of having had her employment unfairly terminated by the landlord, I find that the circumstances of that dispute are related to employment and do not fall within the jurisdiction of the *Residential Tenancy Act*. The tenant is at liberty to pursue other remedies under common law within the jurisdiction of the Small Claims Court.

However since I find that the employment has ended and that the landlord needs possession of the unit to house a caretaker, I must uphold the notice to end tenancy. Under the provisions of section 55, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Since the tenant has not proven her case, she must bear the cost of filing her application.

Conclusion

The notice to end tenancy is upheld and I grant the landlord an order of possession effective by 1:00pm on June 01, 2018.

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: April 04, 2018

Residential Tenancy Branch