Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNE, FFT

Introduction:
The Application for Dispute Resolution filed by the Tenant seeks the following:

a. An order to cancel the one month Notice to End Tenancy dated January 24, 2018 and setting the end of tenancy for April 30, 2018.
b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one Notice to End Tenancy was personally served on the Tenant on February 2, 2018. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on February 12, 2018. With respect to each of the applicant's claims I find as follows:

Issues to be Decided:
The issues to be decided are as follows:

a. Whether the tenant is entitled to an order cancelling the Notice to End Tenancy dated January 24, 2018?
b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:
The respondent owns a mine outside of Kamloops and is attempting to obtain the approvals from the government to work the mine. The respondent purchased a farm (where the rental unit is located on) to act as a buffer between the mine and other ranches in the area. There are three houses on the ranch property which has

historically been used to accommodate ranch hands. The houses were not in good shape.

The applicant was hired by the respondent in September 2012 to act as a Camp Logistics Lead to help facilitate the approval process. The parties produced a copy of this employment contract.

The project stalled because of delays in obtaining environmental approvals. In 2015 the respondent determined there was insufficient work. However, the respondent did not wish to lose a valued employee. The parties had conversations and on December 10, 2015 the applicant accepted the position as ranch hand and the same salary as he previously had. The applicant did not have any previous experience as a ranch hand. There is a letter dated December 10, 2015 setting on the terms of this agreement. The salary is significantly higher than what a ranch hand would receive.

The applicant approached the respondent about moving into one of the houses on the property. In July 2017 the parties agreed and applicant moved in. Prior to this date the parties were not in a residential tenancy relationship. The parties agreed to a rent of $500 per month plus utilities. Significant repairs were necessary and the applicant made the repairs and in consideration was given the first 4 months rent free. The rent is significantly below market value. The applicant was reimbursed by the landlord for his expenses.

The landlord has no interest in renting any of the houses to renters. They are to be used for employees of the landlord only.

On December 14, 2017 the respondent was advised by the B.C. government that they were denied the necessary environment certificates and the mining project could not proceed.

On January 4, 2018 the landlord sent a letter to the Tenant terminating his employment effective January 30, 2018. The letter contained a number of other items including the demand that the tenant must move out of the rental unit by February 28, 2018. The letter also included a without prejudice settlement offer that involved the payment of a severance amount and the proposal that the respondent was prepared to extend his tenancy to April 30, 2018. The offer was open for acceptance to January 12, 2018.

On January 9, 2018 the tenant wrote to the landlord saying “This settlement package is a fair package and I am willing to sign all appropriate documents prior to Friday’s date. This letter is in no way a rejection to your offer, or is intended to be a counter offer.” The letter continues inquiring whether there were employment opportunities as a ranch hand and/or whether he could continue to rent the house “for a reasonable period of time in order to transition my family and animals to a new residence.”

The tenant agreed to the terms in the settlement offer, signed the offer of settlement on January 12, 2018 and returned it to the landlord.

The landlord testified they hired an experienced ranch hand who is scheduled to move in on May 1, 2018.

The landlord referred to an arbitration decision dated April 1, 2018 between another tenant and the landlord which involves similar facts and where the arbitrator dismissed that tenant’s application to cancel the one month Notice to End Tenancy and granted an Order of Possession.

The tenant gave the following evidence and submissions:

- The landlord has the burden of proof to present sufficient evidence establish sufficient cause to end the tenancy on a balance of probabilities.
- The landlord failed to establish all of the elements under section 48(1) to end the tenancy. He was not hired as a caretaker, manager or superintendent and the landlord does not intend to have a caretaker, manager or superintendent move in.
- The landlord cannot end the tenancy as the landlord failed to ensure the tenancy agreement is in writing as required by section 13(1) of the Act.
- The rental property was not listed as a taxable benefit for income tax purposes and is not tied to his employment.
- He has spent consider time and effort repairing the rental unit.
- The tenant in the previous hearing failed to make the arguments that he is relying on in this hearing.
- The tenant testified the landlord has breached the settlement agreement and he is no longer bound.

In summary the tenancy began in July 2017. There is no written tenancy agreement. The rent is $500 per month plus utilities. The tenant did not pay a security deposit.

Grounds for Termination:

Landlord's notice: end of employment with the landlord

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.

(3) A notice under this section must end the tenancy effective on a date that is

(a) not earlier than one month after the date the tenant receives the notice,

(b) not earlier than the last day the tenant is employed by the landlord, and

(c) the day before the day in the month, or in the other period on which the tenancy is based, that rent, if any, is payable under the tenancy agreement.

(4) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(5) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(6) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (5), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

Analysis:

It is not necessary for me to consider whether the landlord is entitled to an Order of Possession under section 55(2)(d) of the Act (that the landlord and tenant have agreed in writing that the tenancy is at an end) as the landlord has not filed an Application for Dispute Resolution seeking an Order of Possession.

After carefully considering all of the evidence I determined the landlord has established sufficient cause to end the tenancy pursuant to the Notice to End Tenancy dated January 24, 2018 for the following reasons:

- I agree with the submission of the Tenant that the landlord does not have sufficient cause to end the tenancy under section 48(1). The tenant is not a caretaker, manager or superintendent and the landlord does not intend to rent it to a person in that capacity.
- However, I determined the landlord has sufficient grounds to end the tenancy under section 48(2) which provides

> "48(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 was the tenant's employer. The employment of the tenant was terminated effective January 30, 2018. The landlord was legally entitled to give the Notice to End Tenancy as the employment has ended. The landlord has complied with section 48(3) and (4). The approved government form was used and it ended the tenancy after the employment has come to an end.
- I do not accept the submission of the tenant that the respondent is precluded from following the procedures under the Residential Tenancy Act to end the tenancy because the tenancy agreement was not in writing.
- I do not accept the submission of the tenant that the landlord cannot end the tenancy under section 48(2) because the rental unit was not rented to him at the start of the term of his employment. I prefer the interpretation that the landlord has rights to end the tenancy if the rental unit was rented to the tenant **during the term of the employment (my emphasis)** and it was not necessary that it be rented at the commencement of the employment.
- The decision of a previous arbitrator is not binding on me. However, I find the decision dated April 1, 2018 in the previous arbitration involving this landlord and another tenant but on similar facts as persuasive.

Determination and Orders:
After carefully considering all of the evidence I determined that the landlord has established sufficient cause to end the tenancy. As a result I dismissed the tenant's application to cancel the Notice to End Tenancy and to recover the cost of the filing fee.. I order that the tenancy shall end on the date set out in the Notice. .

Order for Possession:
The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant's application to cancel a Notice to End Tenancy, the arbitrator must grant an Order for Possession. As a result I granted the landlord an Order for Possession effective April 30, 2018.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

This decision is final and binding on the parties.

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.

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Dated: April 19, 2018

Residential Tenancy Branch