



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EQUITABLE REAL ESTATE INVESTMENT CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Tenant: CNE AAT LAT MNDC OLC
Landlord: MNDC FF

Introduction

This hearing dealt with cross-applications pursuant to the tenant's application to cancel a One Month Notice to End Tenancy For End Of Employment (the Notice or Notice to End), dated February 09, 2018 with an effective date of March 31, 2018 as well as ancillary requests for Orders. The landlord's application sought a Monetary Order. Both parties sought recovery of the filing fee.

Both parties attended the hearing. They respectively acknowledged exchange of all document evidence further submitted to me and that they had satisfactorily reviewed it and could respond to it. The parties were given opportunity to mutually resolve or settle their dispute to no avail. Both parties were given opportunity to present *relevant* evidence and testimony in respect to the applications and to fully participate in the conference call hearing and as well to present witnesses. Prior to concluding the hearing both parties acknowledged they had presented all of the *relevant* evidence that they wished to present.

Preliminary matters

The parties confirmed the issue regarding the Notice to End of this matter as a primary issue to be dealt with at this hearing. There are other claims listed by the tenants in their application and both parties also have monetary claims. One of the objectives of the Residential Tenancy Rules of Procedure for hearings of this nature is to ensure a consistent, efficient and just process for resolving disputes. Further, the Rules of Procedure, Rule 2.3, states that for disputes to be combined on an application they must be related. It is not possible within this context to deal with multiple issues of the parties in one hearing allocation. Accordingly, hearings are generally limited to issues that are related in fact and law. In this case, all other issues are not related to the main dispute over the Notice to End and status of the tenancy. The parties were therefore apprised it was my decision I would solely deal with the primary issue in dispute regarding the Notice to End Tenancy for End of Employment and that the balance of their claims were

therefore dismissed *with leave to re-apply*.

Issue(s) to be Decided

Is the notice to end tenancy valid pursuant to Section 48 and Section 52 of the Act?
Should the Notice to End in this matter be cancelled?

Background and Evidence

The hearing had benefit of a copy of the Notice to End in this matter. The Notice was issued personally on February 09, 2018 for the reasons pursuant to Section 48(1) of the Act which states;

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.

The tenant disputes the validity of the landlord's Notice to End. The parties were apprised the onus as on the landlord to prove they issued a valid Notice to end. The relevant evidence is as follows.

Pursuant to a written employment agreement of the parties as well as their testimony the tenant of this matter has been employed as a resident caretaker of the residential property of which the rental unit is a part since August 2017. The landlord submitted evidence that on February 09, 2018 they provided the tenant with a letter effectively terminating the tenant's employment as their caretaker with notice the tenant vacate the

rental unit provided and occupied by them as a term of their employment. The landlord further provided a copy of the 1 Month Notice to End Tenancy for End of Employment also dated February 09, 2018 in which it provides the reason for issuing the Notice to End a per Section 48(1) of the Act. The landlord also provided a copy of the parties' written employment agreement. The landlord and tenant argued over the wording in the agreement respecting the status of the tenant's suite vis a vis its *designation* as the caretaker's suite. However, both parties agreed the tenant was made the resident caretaker and that the dispute address (unit #209) is the suite on which the parties settled upon would be occupied by the tenant while resident caretaker. It was undisputed by the parties the employment agreement states that upon termination of employment the former employee as resident caregiver is to vacate the resident caretaker's designated suite.

The tenant of this matter disputes the landlord's Notice was issued with an honorable intention to, in good faith rent or provide the rental unit to a new caretaker. The tenant claims that in their own employment contract the dispute address suite which they occupy is not specifically designated as the resident caretaker's suite, although clearly so mentioned in the new caretaker's contract. The tenant testified that in part this proves the landlord has concocted matters out of convenience by now identifying their suite as the caretaker's designated suite. The landlord provided a copy of the new caretaker's employment agreement in which it is dated the 15th day of March 2018. The new agreement further states, "*The designated Caretaker's Suite shall be Suite #209 at _ _ _ _ _ Street, Vancouver, B.C.*" – as written. The parties argued that the last page of the new caretaker's contract states the parties entered into the agreement on the same date as the agreement of the applicant tenant. The landlord explained it as an inadvertent oversight on utilizing the previous agreement as their template.

Analysis

The full text of the Act, and other resources, can be accessed via the Residential Tenancy Branch website: www.gov.bc.ca/landlordtenant.

In this type of application, the burden of proof rests with the landlord to provide evidence that the Notice was validly issued for the stated reasons and altogether establishing valid reason to end the tenancy as prescribed by Section 48 of the Act.

On preponderance of the evidence and on balance of probabilities I find that the applicant tenant of this matter has been employed as the resident caretaker and that they currently occupy a suite the parties effectively agreed as the suite for the tenant while resident caretaker of the residential property of which the rental unit is also a part. I find the Act does not prescribe requirement that a caretaker occupy a rental unit specific or *designated* for the position, although I find that in this matter the tenant's suite effectively became the *de facto* designated resident caretaker's suite. I find that the tenant's employment as the resident caretaker was ended on February 09, 2018. I accept the landlord's evidence of a new employment agreement with a new resident caretaker in which they have established that they intend in good faith to rent or provide the tenant's rental unit to the new resident caretaker. I further accept the landlord's testimony that the new caretaker agreement was inadvertently populated by an incorrect date of acceptance.

I find the tenant has not presented evidence of an ulterior motive in respect to the rental unit of this matter. I find the evidence in this matter is that the landlord truly intends to reuse the rental unit for the following caretaker, as required by the Act.

As a result of all the above, I find that the landlord issued a Notice to End as prescribed by Section 48 of the Act and I find the notice to be valid and that it complies with Section 52 of the Act as per form and content of the Notice. Therefore, I must uphold the landlord's Notice to End of this matter and the tenant's application must effectively be dismissed. **Section 55(1)** of

the Act states that if I dismiss the tenant's application or uphold the landlord's Notice to End, and the landlord's Notice complies with Section 52 as per form and content, I **must** grant the landlord an Order of Possession.

As the effective date of the Notice to End has passed the landlord is entitled to such an Order effective forthwith.

Conclusion

The tenant's application to cancel the landlord's Notice to End of this matter is dismissed.

I grant the landlord an Order of Possession **effective 2 days from the day it is served upon the tenant**. The tenant must be served with this Order of Possession. 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.

The balance of the tenant's application for monetary relief, and the landlord's application, are dismissed *with leave to reapply*.

This Decision is final and binding.

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: May 02, 2018

Residential Tenancy Branch