



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPN

Introduction

This decision pertains to the Landlord's application for dispute resolution made on May 3, 2018, under the *Residential Tenancy Act* (the "Act"). The Landlord seeks an order of possession pursuant to a landlord's notice to end tenancy for end of employment with the landlord.

The Landlord's agent (the "Agent"), a Landlord's witness, and the Tenants attended the hearing before me and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The Agent testified that they served the Notice of Dispute Resolution Proceeding package (the "package") on each of the Tenants by way of Canada Post registered mail on May 4, 2018. The Agent further testified that the packages were received by the Tenants the following day, and the Tenants confirmed receiving the package. The Tenants submitted documentary evidence on May 23, 2018, and provided copies to the Landlord. The Agent acknowledged receiving the Tenants' documents and that they had sufficient time to review the material.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issue of this application is considered in my decision.

Issue to be Decided

Is the Landlord entitled to an order of possession?

Background and Evidence

The Agent testified that the Tenant M.B. started employment with the Landlord in 2001 as the building manager of the apartment building in which the rental unit is located. The apartment building is a three-storey, 82 rental unit complex. The Landlord provided a rental unit (not the rental unit subject to this application) to the Tenants while they were the building managers. In 2009, the Tenants moved into the present rental unit, as that is the unit provided by the Landlord to the building manager. M.B. received a salary from the Landlord for their services. There is a written employment contract in place, which was not submitted into evidence.

The Agent testified that there is no written tenancy agreement, and that the Landlord never enters into tenancy agreements with its building managers because the Landlord does not consider their building managers to be “tenants.”

The Agent testified that on January 8, 2018, the Tenants provided written notice to the Landlord that they would be ending their employment with the Landlord, but that they would continue to provide such services until April 30, 2018. The Landlord responded to the correspondence by confirming acceptance of the employment resignation and that the tenancy would end on April 30, 2018 (the “Notice”). The Tenants submitted into evidence copies of this correspondence, including the Notice.

On February 12, 2018, the Landlord sent a letter to the Tenants advising them that their building manager contract was terminated effective immediately. There is no reference to the tenancy in the letter. The Tenants submitted the letter into evidence.

The Tenant described the rental unit as being provided to them because they are the building manager. When I asked if rent was “free,” the Tenant said “no,” and that “rent is absorbed” by the Landlord. The Tenants submitted into evidence a copy of a written tenancy agreement, in which the tenancy appears to be fixed term, and with rent and utilities set at zero.

The Agent and the Landlord’s witness testified that they have never seen the tenancy agreement that the Tenants submitted, and that no such agreement would exist. The Landlord’s witness, who is a former employee for the Landlord, testified that all of the Landlord’s building managers at its many properties are provided a rental unit either at a heavily discounted rent, or in the rare case of this particular Tenants, for free.

Analysis

Section 48 (2) of the Act states that 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.” Further, section 48 (4) states that a “notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.”

Section 52 of the Act reads as follows:

Form and content of notice to end tenancy

- 52** In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,
 - (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
 - (e) when given by a landlord, be in the approved form.

While the Landlord’s Agent testified that the Landlord does not consider its building managers “tenants,” the evidence and testimony of all parties confirms that the Tenants in this application are each a “tenant” and that there is a “tenancy agreement” for the purposes of the Act. The Landlord provided the rental unit to the Tenants, for 17 years, for their exclusive use while the Tenants provided building management services.

I note that the Notice is not in the approved form as required by section 52 (e) of the Act. The Tenants submitted into evidence a copy of a letter (referred to earlier as the Notice), dated January 8, 2018, from the Landlord to the Tenant (M.B.) stating that “Termination of your tenancy will also end and the premises must be vacated by April 30, 2018 by 1pm.” The letter appears to have been faxed to the Tenants, but the Landlord did not testify or submit any evidence proving that service of the Notice was properly effected under section 88 of the Act. Further, the letter did not state the

grounds for ending the tenancy, as required by section 52 (d) of the Act.

The parties also referred to correspondence sent from the Landlord to the Tenants on February 12, 2018, in which the Landlord terminates the services of the Tenants. However, this letter does not contain any of the information required by section 52 of the Act, nor is it in the approved form. As such, I do not find that the letter of February 12, 2018, constitutes notice under section 48 (4) of the Act, and has no force or effect on the tenancy.

For the reasons set out above, I find that the Landlord has not issued a notice to end tenancy, and the letter dated January 8, 2018, is not sufficient to end the tenancy. Therefore, I dismiss the Landlord's application for an order of possession under section 55 of the Act, with leave to reapply. This tenancy will continue until it is ended in accordance with the Act.

Conclusion

The Landlord's Notice in the letter, dated January 8, 2018, is cancelled and of no force or effect. This tenancy will continue until it is ended in accordance with the Act.

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 31, 2018

Residential Tenancy Branch