



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HUME INVESTMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNE, MNDCT, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- more time to cancel a notice, pursuant to section 66;
- cancellation of the One Month Notice to End Tenancy for End of Employment (the "One Month Notice"), pursuant to section 48;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Tenant M.B. testified that he served the landlord the notice of dispute resolution package and the tenant's amendment by registered mail on June 21, 2018. Tenant M.B. provided the Canada Post Tracking Number to confirm this registered mailing. The landlord's counsel (the "landlord") confirmed receipt of the dispute resolution package on or about June 29, 2018. I find that the landlord was served with this package on June 29, 2018, in accordance with section 89 of the *Act*.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Preliminary Issue- Jurisdiction to Hear Claim

Tenant M.B. argued that the Residential Tenancy Branch (the “RTB”) does not have jurisdiction to hear this matter because the living accommodation in question was primarily occupied for business purposes, contrary to section 4 of the *Act*.

The landlord argued that the RTB has jurisdiction to hear the tenant’s application to cancel the One Month Notice as the residential relationship between the parties is a tenant/landlord relationship linked to the tenants’ employment as resident building managers of the rental property in question.

The landlord’s submissions refer to another RTB hearing between the tenants and the landlord which occurred in May 2018. Both parties agreed that the May 2018 hearing involved the same parties as this hearing, the same residential address, and the same relationship between the parties. In the decision dated May 29, 2018 (the “Decision”), the arbitrator found 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.”

Neither party has filed for review of the May 29, 2018 decision.

Res judicata prevents a plaintiff from pursuing a claim that already has been decided and also prevents a defendant from raising any new defense to defeat the enforcement of an earlier judgment. It also precludes re-litigation of any issue, regardless of whether the second action is on the same claim as the first one, if that particular issue actually was contested and decided in the first action. Former adjudication is analogous to the criminal law concept of double jeopardy.

The previous Arbitrator made a finding accepting jurisdiction as the relationship between the parties is a landlord/tenant relationship. I therefore decline to re-hear the tenants’ claims that the RTB does not have jurisdiction to hear the tenants’ application to cancel the One Month Notice. As per the Decision, I accept jurisdiction to hear the tenants’ application.

The landlord also argued that the RTB does not have jurisdiction to hear the tenant’s application for a monetary award for damage or compensation as the tenant’s monetary claim arises solely out of his contract of employment with the landlord.

Section 2(1) of the *Act* states that this Act applies to tenancy agreements, rental units and other residential property. Tenant M.B. testified that the monetary order he is seeking arose out of his contract of employment with the landlord, not out of the tenancy.

I find that the tenants' monetary claim does not fall within the scope of this *Act*. As stated in section 2(1) of this *Act*, this *Act* only applies to residential relationships, not to business relationships. I decline jurisdiction to decide the monetary claim.

Issue(s) to be Decided

1. Are the tenants entitled to more time to cancel a notice, pursuant to section 66 of the *Act*?
2. Are the tenants entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 48 of the *Act*?
3. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?
4. If the tenants' application is dismissed or if the landlord's notice to end tenancy is upheld, is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. The tenants started employment with the landlord in November of 2001 as resident building managers of the apartment building in which the rental unit is located. When the tenants started their employment with the landlord, the employer required that they move into the "manager's suite". The tenants were not required to pay rent. The tenants also received a salary for their work as building managers. The tenants worked as building managers for approximately 17 years. The initial contract of employment and four subsequent contract amendments were submitted into evidence, confirming the above testimony.

Both parties agree to the following facts. Tenant M.B. drafted a letter dated January 8, 2018 terminating contract services effective April 30, 2018. The landlord drafted a letter dated January 8, 2018 accepting the tenants' termination of contract services and advising that the tenants were to vacate the manager's suite by April 30, 2018 (the "First Notice to End Tenancy"). Both letters dated January 8, 2018 were entered into evidence.

Both parties agree to the following facts. The landlord drafted a letter to the tenants dated February 12, 2018 which stated that the contract of employment with the tenants was "immediately terminated". As of February 12, 2018, the tenants' employment with the landlord ended.

Both parties agree to the following facts. The landlord made an application to the RTB seeking an Order of Possession for end of employment, relying on the First Notice to End Tenancy.

In the Decision the arbitrator found that the First Notice to End Tenancy did not meet the form requirements stated in section 52 of the *Act* and was therefore of no force or effect.

The landlord testified that on June 8, 2018 the tenants were each served with the One Month Notice, with effective dates of July 31, 2018, by registered mail. The landlord provided the Canada Post Tracking Numbers to confirm these mailings. Tenant M.B. testified that he and tenant L.M. received the One Month Notices on June 18, 2018.

The One Month Notice stated the following reason for ending the tenancy:

- Tenant's rental unit/site is part of the tenant's employment as a caretaker, manager or superintendent of the property, the tenant's employment has ended and the landlord intends to rent or provide the rental unit/site to a new caretaker, manager or superintendent.

The tenants filed to dispute the One Month Notice on June 21, 2018.

The landlord testified that they have hired a new resident manager who is currently residing in one of the units at the property in question which would normally be rented out for profit. The landlord further testified that the new resident manager will move into the manager's suite as soon as it becomes available.

Analysis

I find that service of the One Month Notice was effected on the tenants on June 18, 2018, in accordance with section 88 of the *Act*.

Section 48(5) states that 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. I find that the tenants filed to dispute the One Month Notice within 10 days of receiving it. As such, the tenants were not required to apply for more time to cancel the One Month Notice, pursuant to section 66 of the *Act*. I therefore dismiss the tenant's application for more time to cancel a notice, with leave to reapply.

Section 48(1) of the *Act* states that 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:

- the rental unit was rented or provided to the tenant for the term of his or her employment,
- the tenant's employment as a caretaker, manager or superintendent is ended, and

- the landlord intends in good faith to rent or provide the rental unit to a new caretaker, manager or superintendent.

Based on the testimony of both parties, the contract of employment and subsequent contract amendments entered into evidence, I find that the rental unit was provided to the tenants for the term of their employment as resident building managers. Based on the testimony of both parties and the various letters between the parties entered into evidence, I find that the tenants employment as building managers is ended. Based on the testimony of the landlord, I find that the landlord intends in good faith to provide the rental unit in question to a new manager.

Sections 48(2)(3) and (4) of the *Act* state:

(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*].

I find that the landlord provided the tenants with notice to end tenancy as required by section 42(2) of the *Act*. I find that the effective date on the One Month Notice complies with the requirements set out in section 42(3) of the *Act*. I find that the One Month Notice complies with the form and content requirements of section 52 of the *Act*.

Based on the above, I uphold the landlord's One Month Notice and dismiss the tenants' application, without leave to reapply. I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

As the tenants were not successful in their application, I find that they are not entitled to recover the filing fee from the landlord, pursuant to section 72 of the *Act*.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenants**. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: August 15, 2018

Residential Tenancy Branch