



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNE FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for cancellation of the landlords' 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 48; and authorization to recover the filing fee for this application from the landlords, pursuant to section 72 of the *Act*.

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

The landlords confirmed receipt of the tenants' dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the landlords were duly served with the Application. All parties confirmed receipt of each other's' evidentiary materials, and it was confirmed with both parties that they did not object to the inclusion of all evidence submitted for this hearing, including the landlords' late evidence.

The tenants confirmed receipt of the 1 Month Notice dated June 28, 2018. Accordingly, I find that the 1 Month Notice was served to the tenants in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Should the landlords' 1 Month Notice to End Tenancy for End of Employment be cancelled? If not, are the landlords entitled to an Order of Possession on the basis of the 1 Month Notice to End Tenancy for End of Employment?

Are the tenants entitled to recover the filing fee for their application?

Background and Evidence

This month-to-month tenancy started in April 2016, when an arrangement with the landlord was made to assist the landlord with caretaking duties. The landlord testified that the amount of the monthly rent varied with the summer and winter season, and was also weather dependent. The landlords testified that rent varied from \$200.00 in the summer months to \$400.00 in the winter months. The tenants testified that rent was set at \$400.00 in the first year of tenancy, but that rent was permanently reduced to \$200.00.

The landlords served the tenants with a 1 Month Notice to End Tenancy on June 28, 2018, indicating an effective date of July 31, 2018. The landlords testified that they had never given the tenants a formal termination letter for their employment as the 1 Month Notice served that purpose. The landlords testified that the tenants' keys were taken away, and the employment was terminated upon service of the 1 Month Notice.

The landlords testified that the employment was terminated as the tenants had damaged the machines by using the push mowers to remove weeds. The tenants submitted that the landlords had ended the employment as retaliation after the tenants had filed for worker's compensation related to an eye injury resulting from one of the lawn mowers.

Analysis

While I have turned my mind to all the documentary evidence, including miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings are set out below.

Section 48 (1) of the *Act* establishes the grounds by which a landlord may end the tenancy of a person employed as a caretaker of a residential property of which the rental unit is a part by giving notice to end the tenancy under the following terms:

- (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 terms by which the employment relationship ended extend beyond my jurisdiction within the *Act*. However, I am satisfied that the tenants' employment relationship with the landlord ended on or about June 28, 2018. I find that the landlords' 1 Month Notice meets the requirements of subsections 48(1)(a) and (b) of the *Act*.

As was noted by the tenant's counsel at the hearing, there is a two part test established under Guideline #2. This test is set out as follows:

- *The landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy.*
- *The landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.*

Guideline #2 establishes that if the "good faith" intent of the landlord is questioned by the tenant, "the burden is on the landlord to establish that he/she truly intends to do what the landlord indicates on the Notice to End, and that he/she is not acting dishonestly or with an ulterior motive for ending the tenancy as the landlord's primary motive."

Based on the evidence provided by the landlords, I have little doubt that the landlords truly intend to find a new caretaker. The landlord provided credible testimony about why he needed the assistance of a caretaker for the property. I find that the landlord has met the first of the two tests set out in Guideline #2.

The issue before me narrows to whether the landlords have met the burden of proving that the primary motive for seeking an end to this tenancy was not based on a dishonest or ulterior motive. In assessing motivations, I note that there can be a number of motivations for ending a tenancy.

In this case, the landlords testified that the tenants failed to perform their duties to the landlords' satisfaction. It was undisputed by both parties that the tenants' employment ended with the service of the 1 Month Notice. The landlords, in their written evidence, stated that they require the tenants to vacate the unit for 2 reasons 1) due to health reasons the landlords require the assistance of a caretaker to maintain the property 2) the tenants are currently paying below market rent as the reduced rent was a condition of the employment. The landlords refer to the eye injury sustained by one of the tenants, and states that their motive to end this tenancy is not motivated by the tenant's injury or decision to file a worker's compensation claim.

Based on the testimony of both parties, I find that the relationship between both parties had dissolved upon the landlords' discovery that the tenants have not been maintaining the property to the standard that the landlords wished. As outlined above, Guideline #2 requires that both parts of the two-part "good faith" requirement must be met in order to end a tenancy when a landlord intends to provide the rental unit to a new caretaker. I find that the landlords have met the burden of proof required to establish that he truly intends to use the tenant's rental unit as the resident caretaker suite for this rental property. However, I find that the landlords have not met the burden of proving that they are not acting with an ulterior motive for ending the tenancy as the landlords' primary motive. I find that the testimony of both parties during the hearing raised questions about the landlords' good faith. I find that the tenants have provided undisputed testimony that they have been employed by the caretaker since April 2016 with no issues, and it was not until the tenant suffered an eye injury when the landlords expressed concern about the tenants' failure to adequately maintain the property. Section 48 (1) of the *Act* does not provide for unwelcome behavior by a tenant as a reason to end the tenancy by way of a 1 Month Notice for End of Employment. I find that the timing of the 1 Month Notice coincided with the landlords' discovery of the tenant's eye injury, which brings into the question the landlords' true intentions to end this tenancy.

I find that the landlords have not met their burden of proof to show that they do not have any other purpose in ending this tenancy. Based on a balance of probabilities and for the reasons outlined above, I find that the landlords have not met their onus of proof to show that the landlords, in good faith, require the tenants to permanently vacate their rental unit for the specific purpose of renting the unit to a new caretaker.

Accordingly, I allow the tenants' application to cancel the 1 Month Notice. The landlords' 1 Month Notice, dated June 28, 2018, is hereby cancelled and of no force and effect. This tenancy continues until it is ended in accordance with the *Act*.

I also order that the monthly rent for this tenancy be returned to the original amount stated in the residential tenancy agreement. This results in a monthly rent of \$400.00, payable in advance on the first of each month.

As the tenants were successful in their application, I find that they are entitled to recover their \$100.00 filing fee from the landlord.

Conclusion

I allow the tenants' application to cancel the landlord's 1 Month Notice dated June 28, 2018. The 1 Month Notice is of no force or effect. The tenancy will continue until ended in accordance with the *Act*. I set the monthly rent for this tenancy at \$400.00, payable in advance on the first of each month.

I allow the tenants to recover \$100.00 for the filing fee. In order to implement this monetary award, I order the tenants to withhold \$100.00 from a future monthly rent payment to the landlord.

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: September 6, 2018

Residential Tenancy Branch