



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PC URBAN PROPERTIES CORP and PC URBAN BARCLAY HOLDINGS
LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNE, AAT, LAT, OLC, PSF, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants filed under the *Residential Tenancy Act* (the “*Act*”), to cancel a One-Month Notice to End Tenancy for End of Employment with the Landlord, (the “*Notice*”) issued October 15, 2018, for an Order to allow access for the Tenants or their guest, for an Order authorizing the Tenants to change the locks, for an Order for the Landlord to comply with the *Act*, for an Order to provide services or facilities required by the tenancy agreement or the law, for a Monetary Order for damage or compensation under the *Act*, and to recover the filing fee for this application. The matter was set for a conference call.

The Landlord and his Counsel (the “Landlord”), as well as the Tenants, attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenants were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter is described in this Decision.

Preliminary Matter

I have reviewed the Tenants' application, and I note that they have applied to cancel a Notice to end tenancy as well as for several other issues. I find that these other issues are not related to the Tenants' request to cancel the Notice. As these matters do not relate directly to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I explained to the parties, at the outset of the hearing, that I am dismissing with leave to reapply, the Tenants' claims for a monetary order for damages or compensation under the *Act*, for an Order for the Landlord to comply with the *Act*, for an Order authorizing the Tenants to change the locks, for an Order to allow access for the Tenant or their guest, and for an Order to provide services or facilities required by the tenancy agreement or the law.

I will proceed with this hearing on the Tenants' claim to cancel the Notice and to recover the filing fee for this hearing.

Issues to be Decided

- Should the Notice issued October 15, 2018, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Are the Tenants entitled to the return of their filing fee?

Background and Evidence

The parties testified that the tenancy began in October 2017 and that there was no written tenancy agreement between these parties. Both the Landlord and Tenant S.M. testified that S.M. was to provide on-site security and building maintenance services in exchange for a rent-free rental unit.

The Landlord testified that he issued S.M. a written letter to end his employment, on October 15, 2018. The S.M. testified that he received the Landlord's written letter ending his employment. The Landlord submitted a copy of the written letter to end the employment of S.M. into documentary evidence.

The Landlord also testified that he issued the Notice to End Tenancy on October 15, 2018. The reason checked off by the Landlord within the Notice is as follows:

- *Tenant's rental unit/ site is provided by the employer to the employee to occupy during the term of employment and employment ended.*

The Notice states the Tenants must move out of the rental unit by November 17, 2018. The Notice informed the Tenants of the right to dispute the Notice within 10 days after receiving it. The Tenants confirmed receiving the Notice, and that they applied to dispute the Notice on October 23, 2018.

The Landlord testified that the Tenant S.M. was hired to provide on-set building security and maintenance and was provided with a rent-free rental unit in exchange for his services. The Landlord testified that the Tenant's services were no longer required and that the Landlord has ended the Tenant's employment and is requesting an Order of Possession to recover the rental property that had been provided in exchange for the Tenant's services.

The Landlord also testified that he was not aware the Tenant A.C.G. was living in the rental unit and that he had never given permission for A.C.G. to reside on the property.

The Tenant S.M. testified that he had been given the rental unit to live in for free as he was providing security and maintenance services to the Landlord. The Tenant S.M. testified that he understood that his employment had ended with the Landlord and that he would have to move out of the rental unit due to his employment ending.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the sworn testimony from both the Landlord and the Tenant S.M. that this tenancy started as an employment agreement between the Landlord and the Tenant S.M., and that S.M. would be given a rent-free rental unit to live in exchange for security and maintained services on the rental property.

I also accept the sworn testimony from both the Landlord and the Tenant S.M. that the Landlord had ended the Tenant's employment on October 15, 2018.

I find that the Tenants received the Notice to End tenancy on October 15, 2018, pursuant to section 48 of the *Act*.

Landlord's notice: end of employment with the landlord

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.

(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.

Pursuant to section 48 of the *Act* the Tenants had ten days to dispute the Notice. I find the Tenants had until October 25, 2018, to file their application to dispute the Notice. The Tenants filed her application on October 23, 2018, within the statutory time limit.

I accept the Tenant's (S.M.) testimony that the rental unit and been provided to him as a condition of his employment and that he understands that his employment has ended.

Pursuant to section 48 of the *Act*, the Landlord has the right to end a tenancy that was established due to employment. In this case, I find that this tenancy was established as a condition of one of the Tenants' employment and that the term of Tenant's

employment has ended. Therefore, I find that the Landlord has provided sufficient cause to end this tenancy, and I dismiss the Tenants' application to cancel the Notice issued on October 15, 2018.

Section 55 of the *Act* states that a landlord may request an order of possession if a notice to end the tenancy has been given by the landlord and the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice

Pursuant to section 55 of the *Act*, I am required to grant the landlord an order of possession to the rental unit. I have reviewed the Notice and, I find the Notice issued on October 15, 2018, is valid and enforceable. Therefore, I am granting the Landlord and Order of Possession effective not later than 2 days after service of this Order upon 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. The Tenants are cautioned that the costs of such enforcement are recoverable from the Tenant.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants were not successful with their application, I find the Tenants are not entitled to recover the filing fee from the Landlord.

Conclusion

The Tenants' Application to cancel the Notice, issued on October 15, 2018, is dismissed. I find the Notice is valid and complies with the Act.

I grant an **Order of Possession** to the Landlord effective **two days** after service of this Order on the tenant. 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: December 3, 2018

Residential Tenancy Branch