Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TREELANE ESTATES STRATA PLAN VIS 609 and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC DRI FFT OPT

Introduction

This decision is in respect of the tenants' application for dispute resolution under the *Residential Tenancy Act* (the "Act"). The tenants seek the following remedies:

1. an order cancelling a One Month Notice to End Tenancy for End of Employment (the "Notice"), pursuant to section 47 of the Act;
2. an order relating to a dispute of a rent increase;
3. an order of possession for the tenants; and,
4. an order for compensation for the filing fee.

A dispute resolution hearing was convened on March 4, 2019 and the tenant and two landlord agents attended, were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The parties did not raise any issues regarding the service of documentary evidence.

I note that section 55 of the Act requires that when a tenant applies 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's notice to end tenancy complies with the Act.

As the tenants are already in possession of the rental unit, I find that their application for an order of possession to be moot, and I dismiss that aspect of their claim.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure* and to which I was referred, only evidence relevant to the issues of this application are considered in my decision.

Issues to be Decided

1. Are the tenants entitled to an order cancelling the Notice?
2. Are the tenants entitled to an order relating to a dispute of a rent increase?
3. Are the tenants entitled to an order for compensation for the filing fee?

Background and Evidence

The tenancy began on January 1, 2017 and is a month-to-month tenancy. Monthly rent is $1,200.00, with no security or pet damage deposit. The written tenancy agreement, which was submitted into evidence, indicates that "Monthly Rent to be reduced by $250./month for office space used in unit [number]." Page 6 of the tenancy agreement indicates that there "is not an Addendum" to the agreement.

The landlord's representative testified that the tenant was the building resident manager during the tenancy, but that he gave his notice of resignation on December 26, 2018, and that he would be resigning from the job of resident manager effective January 31, 2019. The landlord responded to the tenant and attempted to obtain some clarification about when the tenants would be vacating.

The landlord tried serving the Notice in-person on the tenants on January 6, 2019, but the tenant "refused to accept it." So, the landlord then sent the Notice by registered mail on or about January 31, 2019, with an amended end of tenancy date of February 28, 2019. A copy of the first Notice was submitted into evidence, but not the second notice.

The tenant testified that both notices were served and issued incorrectly, and stated that (among other issues), the move out date was wrong.

In respect of the tenancy agreement, the tenant argued that there were no addendums to the tenancy agreement, and that the separate document that he submitted, which refers to the resident manager's salary and such, does not indicate that he had to vacate the rental unit if he quits as resident manager.

One page of this document was submitted into evidence, and clause 5 reads as follows:

> The strata will compensate the employee $250/month for having the "Resident Managers office" in their unit and using their office equipment; i.e. computer, printer, desk. The employee will rent the strata owned suite, [address of rental

> unit], in accordance with the Residential Tenancy Act, during the term of employment and the compensation of the “Resident Managers office” will be deducted from the rent.

This deduction is referenced in the tenancy agreement. In addition to this document the tenant submitted a letter purportedly written by two of the rental unit’s previous tenants who indicated that when they resided in the rental unit they were not resident managers.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Where a tenant applies to dispute a One Month Notice to End Tenancy for End of Employment, the onus is on the landlord to prove, on a balance of probabilities, the ground on which the Notice was issued.

The ground for ending the tenancy is written as follows on page two of the Notice: “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.” This language is based on section 48 of the Act, which deals with tenancies ending because of employment ending.

Section 48 of the Act deals with the situation of a landlord ending a tenancy based on a tenant’s employment with the landlord. This section (subsections (1) and (2)) reads as follows:

> 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.

(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.

The question on which the Notice hinges is, was the rental unit rented or provided to the tenant for the term of his employment? I find that it was not.

First, the tenancy agreement lists monthly rent as $1,200.00. The rent is “to be reduced by $250./month for office space used in unit [number]. There is no addendum indicated on the tenancy agreement. There was no signed addendum submitted into evidence by the landlord. Thus, the only terms of the tenancy agreement that are enforceable are those that exist within the written tenancy agreement. That monthly rent is listed at $1,200.00 implies, I find, that if the tenant was not using office space in the rental unit that the rent would be $1,200.00. If and only if office space was being used (presumably for building resident purposes) would there be a deduction. Nowhere in the tenancy agreement is there a term that clearly states that the tenancy is contingent upon the tenant’s employment as resident manager.

While the landlord did not directly address this term of the tenancy agreement, they did submit that the tenant was renting the rental unit as a condition of his employment. However, the tenancy agreement—that is, the contract between the parties governing the tenancy—does not explicitly state this.

In cases were there is an ambiguous term of an agreement, where the parties dispute the term, and where neither party has provided additional evidence that might bring clarity to the term, I must apply the *contra proferentem* rule. *Contra proferentem* is a rule of contractual interpretation which provides that an ambiguous term will be construed against the party responsible for its inclusion in the contract. This interpretation will therefore favour the party who did not draft the term, because the party not responsible for the ambiguity should not be made to suffer for it. This rule endeavours to encourage the drafter to be as clear as possible when crafting an agreement upon which the parties will rely.

In this case, the landlord is the party responsible for drafting the terms of the tenancy agreement. Having found that the tenancy agreement does not state that the tenancy is contingent upon the tenant's employment as a resident manager, I find that that the rental unit was not rented or provided to the tenant for the term of his or her employment. The tenancy would revert to the monthly rent of $1,200.00 if the tenant were to stop being employed as resident manager.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving the ground on which the Notice and the subsequently issued (amended) notice were issued.

These notices are therefore cancelled and of no force or effect. The tenancy will continue until it is ended in accordance with the Act.

Conclusion

The Notice and the subsequently issued (amended) notice are cancelled and of no force or effect. The tenancy shall continue until it is ended in accordance with the Act, and, monthly rent is to continue at $1,200.00, unless increased in accordance with the Act.

As the tenants were successful in their application I grant the tenants a monetary award of $100.00 for recovery of the filing fee. The tenants may make a one-time deduction of $100.00 in their rent for April 2019 in full satisfaction of this award.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: March 4, 2019

Residential Tenancy Branch