



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

On January 16, 2019, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”), seeking an Order to comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing and the Landlord attended the hearing as well, with R.D. and S.A. attending as agents for the Landlord. All parties provided a solemn affirmation.

The Tenant advised that he served the Notice of Hearing package by registered mail to the Landlord on January 16, 2019 and the Landlord confirmed that he received this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served with the Notice of Hearing package.

The Tenant advised that he served his evidence by registered mail to the Landlord on February 7, 2019 and the Landlord confirmed that he received this evidence. As this complies with the service requirements of Rule 3.14 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering a decision.

The Landlord advised that he served his evidence by registered mail to the Tenant on February 13, 2019 and the Tenant confirmed that he received this evidence when he returned to the rental unit on February 23, 2019. As service of this evidence complies

with the service requirements of Rule 3.15 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering a decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

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 complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to an Order that the Landlord comply?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Both parties agreed that a tenancy agreement was in effect prior to the Landlord purchasing the rental unit on March 31, 2018. Prior to this sale, the Tenant had been paying \$500.00 per month in rent and that was due on the first of each month. The Tenant advised that he paid a \$250.00 security deposit to the previous landlord.

The Landlord stated that the Notice was served by being posted on the Tenant's door on January 10, 2019 and the Tenant confirmed that he received this on January 11, 2019. The reasons the Landlord served the Notice are because the "Rental unit/site

must be vacated to comply with a government order” and the “Tenant’s rental unit/site is provided by the employer to the employee to occupy during the term of employment and employment has ended.” The Notice indicated that the effective end date of the Notice was February 28, 2019.

R.D. advised that prior to the Landlord purchasing the rental unit, the seller received letters from the municipality ordering that there were issues that needed to be corrected with the property in order to comply with local by-laws. He stated that there were many documents corroborating that the municipality would continue to check up on the status of compliance. As well, he advised that through these documents, the Landlord was “basically ordered” to have the tenancy ended so that the Landlord could rectify the issues and comply with local by-laws. He referred to a letter, submitted as documentary evidence, dated May 9, 2018 as his proof of the municipality’s Order to comply.

The Tenant advised that there has never been an Order from the municipality that has been served to him by the Landlord. He is aware that these types of Orders must be posted to the residence and no such Order has ever been issued or posted.

R.D. advised that after the Landlord purchased the rental unit, he required someone to be the point person for all contact between the Landlord and the other tenants that lived in the rental unit. He stated that there was a verbal agreement that the Tenant would work for the Landlord in this capacity. He then submitted that the Tenant would not pay rent in lieu of being a caretaker and facilitator of the rental unit. Amongst the duties discussed with the Tenant were general maintenance responsibilities.

The Tenant advised that he offered to pay rent every month to the Landlord ever since he purchased the rental unit, but the Landlord refused to accept it. He stated that he felt guilty not paying rent, so he felt obligated to help out the Landlord. He confirmed that he assisted R.D. in communicating with the other tenants. As well, he acknowledged that he cleaned the rental unit and conducted basic repair work; however, he stated that there was never a meeting between him and the Landlord where he was offered terms of employment or where his obligations as an employee were outlined. Consequently, there was never an agreement that he would be an employee of the Landlord, as opposed to a Tenant, and there was never a written agreement to support an employment arrangement.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

With respect to the Notice served to the Tenant on January 10, 2019, I have reviewed this Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I find that this Notice meets all of the requirements of Section 52.

With respect to the validity of the reasons indicated on the Notice, the onus is on the party issuing the Notice to substantiate the reasons for service of the Notice. Regarding the Landlord's first reason for issuing the Notice, R.D. stated that he had many documents supporting that the Landlord was served a government Order to have the rental unit vacant to comply with local by-laws. However, he did not submit any of these documents as evidence for consideration nor could he point to an actual Order in the evidence that he did submit. While he referred to the letter he submitted dated May 9, 2018 to support his position that the municipality has in fact issued an Order, I do not find it reasonable that if this was indeed the case, that the municipality would not have taken any further action given that this was brought to the Landlord's attention almost a year ago. Furthermore, I find R.D.'s statement during the hearing that the Landlord was "basically ordered" to comply further supports the likelihood that there has been no official government Order that has been issued. As such, I do not find the Landlord's evidence or testimony compelling or persuasive and I am not satisfied that the Landlord has properly substantiated the grounds for ending the tenancy on this point.

Regarding the second reason for issuing the Notice, while R.D. contends that the Tenant was actually an employee of the Landlord, I find it important to note that there is no written agreement to establish or corroborate this arrangement. As an employer, I would find it reasonable and sensible to document such an agreement so that there would be no dispute or confusion over the roles and responsibilities of the employee. The parties provided conflicting testimony with respect to a purported employment arrangement; however, the onus is on the party issuing the Notice to substantiate the reasons for service of the Notice. I find it important to note that R.D. initially stated that the Tenant's role was as a facilitator and main point of contact with the other tenants; however, as the hearing progressed he would spontaneously submit additional responsibilities that the Tenant was responsible for. I find that R.D.'s indiscriminate submissions do not support his testimony that a meeting was held between the parties where all the

responsibilities and duties expected of the Tenant as an employee were clearly outlined or agreed upon. Consequently, I do not find R.D.'s submissions to be credible or persuasive, and in the absence of a written employment agreement, I am not satisfied that the parties agreed to this arrangement in lieu of rent. As such, I am not satisfied that the Landlord has properly substantiated either of the grounds for ending the tenancy. Therefore, I am not satisfied of the validity of the Notice. Ultimately, I find that the Notice is of no force and effect.

As the Tenant was successful in his claims, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

Based on the above, I hereby order that the One Month Notice to End Tenancy for Cause of January 10, 2019 to be cancelled and of no force or effect.

I provide the Tenant with a Monetary Order in the amount of **\$100.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: March 1, 2019

Residential Tenancy Branch