



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MANZANITA ESTATES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNE, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for End of Employment dated March 28, 2019 ("One Month Notice"), and to recover the cost of her filing fee.

The Tenant and an agent for the Tenant (the "Agent") appeared at the teleconference hearing and gave affirmed testimony. No one attended for the Landlord. I explained the hearing process to the Tenant and her Agent and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and her Agent were given the opportunity to provide their affirmed evidence orally and to ask questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary and Procedural Matters

The Tenant said she served the Landlord with the Application and her documentary evidence via registered mail on April 17, 2019, and she provided a Canada Post tracking number for this package. Pursuant to section 90 of the Act, I find that the Landlord was served with the Application on April 22, 2019. The Agent said that the Landlord's agent, B.P. (the "Landlord's Agent"), said he was not going to attend the hearing, as he was not challenging the Tenant's Application.

Issue(s) to be Decided

- Should the One Month Notice be cancelled or approved?
- Is the Tenant entitled to recovery of the cost of the filing fee?

Background and Evidence

The Tenant said she has lived in the rental unit for approximately 40 years. She said the monthly rent is \$600.00, due on the first day of the month, and that she did not pay a security or pet damage deposit. The Tenant said the building is approximately 70 years old and her rental unit has two bedrooms and one bathroom.

The Tenant said she was served with the One Month Notice on March 30, 2019. She submitted a copy of the One Month Notice, which was signed, dated, set out the rental unit address, the effective vacancy date of April 30, 2019, and the reason for the eviction being that "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 Tenant submitted a copy of a letter she received from the Landlord's Agent with the One Month Notice, which said:

Address

March 27, 2019

Dear [Tenant],

Enclosed is a One Month Notice to Terminate your Tenancy. This is not something I wanted to do, but it is basically a requirement of the new owner if I want to close the sale of the building. I am reassured by his email that their intent is that you stay in the building, but at a higher rent.

[Signature],

[B.P.]

The Agent directed my attention to another, more recent letter he received from the Landlord's Agent, which explains the Tenant's employment in the building:

[Landlord's corporate
name and address]

[Agent's name
and address]
April 5, 2019

Dear [Agent],

[Tenant] was a tenant in Unit #201 of [building name] for several years before she became manager of the building. She became manager of the building in 2007 when the previous manager died.

[Tenant's] tenancy in Unit #201 was not ever tied to her work in the building. We didn't raise rent as partial compensation of the time she put into taking care of matters at the building. She was also a paid employee.

I was the owner of the building ([Landlord's corporate name]) before we sold it.

Regards,
[Signature]
[B.P.]

The Tenant said that the residential property was sold on April 1, 2019.

Analysis

Section 48 of the Act addresses this type of One Month Notice:

Landlord's notice: end of employment with the landlord

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.

Based on the undisputed evidence before me, I find on a balance of probabilities that the One Month Notice was not issued in compliance with section 48 of the Act for the following reasons.

First, I find that the word “and” at the end of section 48(1)(b) means that all three sub-sections are conditions that must be met for a landlord to end the tenancy of a person employed as a building manager of the residential property.

Further, the Tenant said she has lived there for about 40 years, and became a building manager in 2007. I find that this and the correspondence the Tenant received from the Landlord’s Agent makes it clear that the rental unit was not “rented or provided to the Tenant for the term of her employment” as a building manager.

In addition, the Landlord Agent’s intent was set out in his letter dated March 27, 2019, where he said that he did not want to serve her with the One Month Notice, but rather, that he was doing it to finalize the sale of the residential property. He went on to say that the new owner’s intention was to raise the rent paid by the Tenant, and by extension I find, the rent paid for the rental unit.

Based on the evidence before me, I find that the Tenant’s tenancy in the rental unit was not provided to her as a term of employment, and that neither the old nor the new landlord had the good faith intention to provide the rental unit to a new caretaker, manager or superintendent.

As a result, I cancel the One Month Notice, which I find is of no force and or effect. I order the tenancy to continue until ended in accordance with the Act.

As the Tenant was successful with her Application, I award her recovery of the \$100.00 filing fee.

Conclusion

The Landlord served the Tenant with a One Month Notice to End the Tenancy for End of Employment; however, the evidence indicates that the Landlord’s reasons for issuing the notice were inconsistent with section 48, the applicable section of the Act.

The One Month Notice is cancelled and is of no force or effect; the tenancy continues until ended in accordance with the Act.

The Tenant is awarded recovery of the \$100.00 filing fee for this Application and is authorized to reduce one future rent payment by \$100.00 in satisfaction of this award.

This decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: May 08, 2019

Residential Tenancy Branch