



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNE, FF

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy for end of employment and for the recovery of the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant represented herself. The landlord was accompanied by his legal counsel.

As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

Issues to be decided

Does the landlord have reason to end the tenancy or should the notice to end tenancy be set aside and the tenancy be allowed to continue?

Background and Evidence

The tenancy started in November 01, 2016. A copy of the tenancy agreement was filed into evidence. The rent was \$700.00 due on the first of the month. The tenant stated that initially she moved into a trailer on the landlord's property and paid \$700.00 for rent. The tenant stated that in June 2017, she moved into the house located on the same property that was being occupied by the property manager who was evicted pursuant to a notice to end tenancy for landlord's use of property. The landlord had served the notice on the property manager for the purpose of having his son move in to take over as property manager.

The tenant moved into the home and agreed to allow the landlord's son to live in the home while he managed the rental property. The tenant stated that the landlord's son did not move in and the tenant continued to occupy the rental unit.

The tenant stated that her spouse did some work around the landlord's rental property for which he billed the landlord. The landlord stated that the employment agreement

was verbal, and that he provided the tenant with a discounted rent of \$700.00 for her services. The tenant denied having any such discussion with the landlord and confirmed that both her spouse and she were not employees of the landlord.

The landlord stated that the original rent was \$1,100.00 which was paid by the previous occupant of the house. However, the tenant added that the \$1,100.00 included the rent of 4 stalls at \$150.00 each. Accordingly, the rent that the previous occupant paid worked out to \$500.00. The tenant stated that she was not given any rent rebate by the landlord and that she rents a stall for which she pays an additional \$150.00. The parties agreed that there is no written agreement between the parties regarding employment. On May 31, 2019, the landlord served the tenant with a notice to end tenancy for end of employment with the landlord.

Analysis

Based on the sworn testimony of both parties and the documents filed into evidence I find that on May 31, 2019, the landlord served the tenant with a notice to end tenancy for end of employment and that the tenant disputed the notice in a timely manner. Pursuant to s.48 (1) of the *Residential Tenancy Act* a landlord may end the tenancy of a person employed as a caretaker of the property of which the rental unit is a part by giving notice to end the tenancy if:

- a) The rental unit was provided to the tenant for the term of her employment
- b) The tenant's employment as a caretaker is ended and
- c) The landlord intends in good faith to provide the rental unit to a new caretaker.

Pursuant to s.48(2) of the *Residential Tenancy Act*, an employer may end the tenancy of an employee in respect of a rental unit provided by the employer to the employee to occupy during the term of employment, by giving notice to the tenant if the employment is ended

In this case, there is no written employment agreement between the parties. The only written agreement consists of the tenancy agreement. The landlord stated that he provided accommodation at a lower rent in exchange for the tenant's services as a property manager. During the hearing, I determined that the previous occupant was paying rent in the amount of \$500.00 and providing property management services. However this tenant pays a monthly rent of \$700.00 and therefore there is no rent rebate provided to the tenant.

In the case of verbal agreements, I find that when verbal terms are clear and when both the landlord and tenant fully agree on the interpretation, there is no reason why such

terms can't be enforced. However, when the parties are in dispute about what was agreed-upon, then verbal terms by their nature are virtually impossible for a third party to interpret for the purpose of resolving a dispute that has arisen.

Moreover, it is important to note that in a dispute such as this, the two parties and the testimony each puts forth, do not stand on equal ground. The reason that this is true is because one party must carry the added burden of proof. In other words, the landlord has the onus of proving, during these proceedings, that the tenant was employed by the landlord and that the rental unit was provided to the tenant for the term of the employment. When the evidence consists of conflicting and disputed verbal testimony, then the party who bears the burden of proof will not likely prevail

The tenant maintained that she was not employed by the landlord and that she did not provide property management services to the landlord. The landlord agreed that his son was supposed to move into the rental unit to manage the property but was unable to move in. Based on the above, I find that the tenant was not employed by the landlord and therefore the tenancy cannot end with a notice such as the one served on the tenant by the landlord. Therefore, I grant the tenant's application and set aside the notice to end tenancy. Since the tenant has proven her claim, I award her the recovery of the filing fee. The tenant may make a one-time deduction of \$100.00 off a future rent

Conclusion

The notice to end tenancy is set aside and is of no force or effect.

The tenant may make a one-time deduction of \$100.00 off a future rent.

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: July 28, 2019

Residential Tenancy Branch