Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding THE OWNERS, STRATA PLAN EPS1197 C/O FIRST SERVICE and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNE, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the "*Act*") to cancel a One Month Notice to End Tenancy for End of Employment (the "One Month Notice"), and for the recovery of the filing fee paid for the Application for Dispute Resolution.

Two agents for the Landlord (the "Landlord") were present for the hearing, as was the Tenant. The Tenant confirmed receipt of a copy of the Landlord's evidence. The Landlord stated that they did not receive the Notice of Dispute Resolution Proceeding package or a copy of the Tenant's evidence. However, the Tenant confirmed that the hearing documents and a copy of his evidence was sent to the Landlord by registered mail at the address noted as the Landlord's service address on the One Month Notice.

The Tenant provided the registered mail tracking information which is included on the front page of this decision. Entering the tracking number on the Canada Post website confirms that the package was sent on July 29, 2019 and after not being claimed was returned to the sender on August 21, 2019. Although the Landlord testified that in September 2019 they emailed the Tenant with an address for service, I find that the Tenant served the documents in accordance with Section 89 of the *Act* and within the timelines required by the *Residential Tenancy Branch Rules of Procedure.*

I also note that the address as provided on the One Month Notice is stated as the address for service of the Landlord, so I find it reasonable that the Tenant would serve the Landlord documents at this address. As such, pursuant to Section 90 of the *Act* I find that the Landlord is deemed to have been served with the hearing documents and a copy of the Tenant's evidence as of August 3, 2019.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have considered 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.

Issues to be Decided

Should the One Month Notice be cancelled?

If the One Month Notice is upheld, is the Landlord entitled to an Order of Possession?

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The Tenant stated that his tenancy began on July 1, 2013 through an employment contract as building manager of the residential property. The Tenant stated that monthly rent was $500.00 and is now $750.00 as market value rent as stated in the employment contract. The Tenant stated that he paid a security deposit of $250.00.

The Landlord stated that the tenancy began on August 1, 2013 through an employment contract that was signed with the Tenant in June 2013. The Landlord stated that rent was $500.00 during the Tenant's employment but as the employment has now ended the Tenant is to pay the market value rent of $2,200.00. The Landlord also stated that the Tenant did not pay a security deposit and that a transaction of $250.00 at the start of the tenancy was for a float as part of the Tenant's employment.

The Tenant referenced the first page of the employment contract which indicates that the market value of the unit is $750.00, and the Tenant is to pay $500.00 after a 'caretaker suite allowance'. The Landlord agreed that the market value of the unit at the time the tenancy started was $750.00. However, they referenced page two of the employment contract which states that overholding of the unit will be at market value, meaning the current market value.

The Landlord provided testimony that the Tenant was served with the One Month Notice in person on July 18, 2019. The Tenant confirmed receipt of the One Month Notice on this date.

A copy of the One Month Notice was submitted into evidence and states the following as the reason for ending the tenancy:

- 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.

The effective end of tenancy date of the One Month Notice was stated as July 31, 2019 although the Landlord noted that this was an error and the end of tenancy date had been clarified with the Tenant as August 31, 2019.

The Landlord testified that along with the One Month Notice, they served the Tenant with an end of employment letter on July 18, 2019. A copy of the letter was submitted into evidence and states that the Tenant's employment was terminated immediately as of that date.

The Landlord referenced the employment contract that was included in evidence and stated that the tenancy was a condition of the Tenant's employment and therefore, as the employment has ended, the tenancy was ended through service of the One Month Notice. The employment contract notes that the tenancy is provided as a condition of employment and that the rental unit must be vacated when employment is terminated, unless permission has been obtained to overhold the rental unit.

The Landlord stated that a new building manager will be moving into the rental unit as soon as it has been vacated by the current Tenant. They stated that they have not been able to finalize the details of the new building manager moving in as they cannot provide tenancy to the manager until the current Tenant moves out.

The Tenant stated that he has been in touch with the new building manager/caretaker and was told that the new manager does not have a date when he is moving in. He questioned whether or not the landlord has an agreement with the new manager to occupy the rental unit. The Tenant stated his position that the One Month Notice was issued in bad faith and he questioned whether the Landlord intends to rent out the unit for a higher rent to a non-employee.

The Landlord stated that the rental unit in question is owed by the strata corporation of the building and is designated for use by the building manager. The Landlord stated that the One Month Notice was issued in good faith as they intend to have the new building manager move into the rental unit as soon as the current Tenant moves out.

The Tenant testified that his rent was not withdrawn for August 2019 and therefore he questioned whether he should have been served a Two Month Notice for Landlord's Use of Property (the "Two Month Notice") pursuant to Section 49 of the *Act.* The Landlord clarified that they could not withdraw the rent as the Tenant was no longer employed during August 2019, and instead that the Tenant was to pay them the market rent of $2,200.00.

The parties discussed settlement but were unable to reach an agreement.

Analysis

The parties agreed that the Tenant was served with the One Month Notice on July 18, 2019. I find that the One Month Notice was served in accordance with Section 48 of the *Act.* As stated in Section 48(5) of the *Act* a tenant may apply to dispute the One Month Notice within 10 days. As the Tenant filed the Application for Dispute Resolution in person on July 29, 2019, I find that he applied within the time allowable, given that the office was closed on July 28, 2019. Therefore, the matter before me is whether the One Month Notice is valid.

As stated by rule 6.6 of the *Rules of Procedure,* when a tenant applies to cancel a notice to end tenancy, the landlord has the onus to prove, on a balance of probabilities, that the reasons for the notice are valid.

The parties were in agreement that the Tenant's employment was terminated on July 18, 2019. I also find that the Tenant did not dispute that his tenancy was a condition of employment, which I find to also be established by the employment contract submitted into evidence. As such, I find that the One Month Notice was served in accordance with Section 48(1) of the *Act* 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.

As the Tenant's employment was ended on July 18, 2019, I find that the Landlord was within their rights to serve the Tenant with the One Month Notice given that the tenancy was a condition of the employment.

While the Tenant questioned the good faith intentions of the Landlord in issuing the notice, I accept the testimony of the Landlord that they intend to have a new building manager move into the rental unit and that the rental unit is only designated for use by a building manager. The Tenant also provided testimony that he spoke to the new building manager who was unsure when he would be moving in, which supports the Landlord's testimony that a new building manager has been hired, but they have been unable to confirm a tenancy start date.

I also do not find evidence before me that the Tenant was incorrectly served with the One Month Notice instead of a Two Month Notice pursuant to Section 49 of the *Act.*

As such, I find that the testimony and evidence of both parties supports that the tenancy was a term of employment, that the employment has now ended, and that a new building manager will be moving into the rental unit. I am satisfied that the Landlord has met the burden of proof in this matter. Therefore, I find that the One Month Notice dated July 18, 2019 is valid.

As the Tenant was not successful with the application, I also decline to award the recovery of the filing fee paid for the application. The Tenant's application to dispute the notice is dismissed, without leave to reapply.

Upon review of the One Month Notice I find that the form and content comply with Section 52 of the *Act* and therefore, pursuant to Section 55(1) of the *Act,* the Landlord is entitled to an Order of Possession. I award the Landlord an Order of Possession effective September 30, 2019 at 1:00 pm.

Conclusion

The Tenant's Application for Dispute Resolution is dismissed, without leave to reapply.

Pursuant to Section 55 of the *Act,* I grant an Order of Possession to the Landlord effective **September 30, 2019 at 1:00 pm.** This Order must be served on the Tenant. Should the Tenant 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: September 27, 2019

Residential Tenancy Branch