



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GATEWAY PROPERTIES
MANAGEMENT PACIFIC VILLAGE II LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNE, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlords' 1 Month Notice to End Tenancy for End of Employment, dated September 11, 2019 ("1 Month Notice"), pursuant to section 48; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlords' agent ("landlord") and the two tenants (male and female) attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he was the property manager for the landlord company GPM named in this application, that was representing the rental property company PVL, and that he had permission to represent both landlords and the owner of the rental unit (collectively "landlords"). This hearing lasted approximately 34 minutes.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package and the female tenant confirmed receipt of the landlords' evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlords were duly served with the tenants' application and the tenants were duly served with the landlords' evidence package.

The landlord testified that the tenants were served with the 1 Month Notice on September 11, 2019, by way of posting to their rental unit door. The female tenant confirmed receipt on September 13, 2019. In accordance with sections 88 and 90 of the Act, I find that both tenants were duly served with the landlords' 1 Month Notice on September 13, 2019.

Issues to be Decided

Should the landlords' 1 Month Notice be cancelled? If not, are the landlords entitled to an order of possession?

Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on March 1, 2019. Monthly rent in the amount of \$1,100.00 is payable on the first day of each month. A security deposit of \$550.00 was paid by the tenants and the landlords continue to retain this deposit. Both parties signed a written tenancy agreement. The tenants continue to reside in the rental unit.

Both parties provided a copy of the 1 Month Notice, which has an effective move-out date of October 31, 2019. Both parties agreed that the reason indicated on the notice was the following:

- *Tenant's rental unit/site is provided by the employer to the employee to occupy during the term of employment and employment has ended.*

Both parties agreed to the following facts. The male tenant signed an employment contract ("contract") to work as a maintenance technician for an employer company. The contract is dated for January 1, 2019 and was signed by the male tenant on January 17, 2019. The male tenant initialled each page of the contract. The contract indicates that the rental unit is provided as a term of the male tenant's employment and once the employment is terminated, the male tenant has to vacate the rental unit. The

male tenant's employment was terminated pursuant to a letter, dated June 17, 2019, from the employer.

Both parties agreed that clause 2.3 of the contract reads as follows:

Without limiting sections 2.1 and 2.2, the Maintenance Technician hereby agrees that his tenancy in the Building Owner's Apartment and the tenancy agreement in respect thereof will be terminated effective as of, and that the Maintenance Technician will give up possession of the Building Owner's Apartment on, the effective date of any termination of the Maintenance Technician's employment for any reason by either party, or on the day thereafter, that any period of notice which may be required by any applicable residential tenancy legislation expires, if different.

The tenants seek to cancel the landlords' 1 Month Notice and to recover the \$100.00 filing fee for this application. The male tenant claimed that although he signed and initialled his contract, he did not read it properly. He said that he knew that the rental unit was tied to his employment when he began residing there but claimed that he did not know that he had to leave the rental unit if his employment ended. The female tenant said that she did not know about the above clause 2.3 of the contract.

The female tenant claimed that the landlords altered the parties' written tenancy agreement after the tenants signed it to include the following "employment clause:" "tenancy is subject to employment at the property. Once employment is terminated tenancy will be terminated also." The female tenant said that she did not initial this area. The male tenant said that he did not initial this area or write any comments. The tenants maintained that because the landlords added this employment clause after they signed the tenancy agreement, it was not enforceable. The tenants provided a copy of their signed tenancy agreement, where the male tenant only initialled in specific areas, and the above clause was not included in their signed copy.

The landlords provided a copy of the tenancy agreement, signed by the landlords and the tenants, with the above employment clause included. The landlord said that the landlords did not alter anything in the tenancy agreement and the tenants must have made a copy of it before the landlords signed it, because the landlords' signature was not included on the tenants' copy. The landlord said that he did not witness anything because he was not involved at the time. The landlord testified that clause 2.3 of the contract, which was initialled by the male tenant, and the entire contract, which was

signed by the male tenant, indicates that the tenants must vacate the rental unit if the male tenant's employment ends. He maintained that since the employment ended and the tenants did not vacate, he was required to issue the 1 Month Notice to them.

Analysis

In accordance with section 46(4) of the *Act*, the tenants must file their application for dispute resolution within ten days of receiving the 1 Month Notice. In this case, the tenants received the notice on September 13, 2019 and applied to dispute it on September 17, 2019. Therefore, I find that they are within the time limit under the *Act*. Accordingly, the burden falls on the landlords to prove the reason on the notice.

Section 48(2) of the *Act* establishes the grounds by which landlords may end the tenancy under the following term:

(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.

On a balance of probabilities and for the reasons stated below, I dismiss the tenants' application to cancel the landlords' 1 Month Notice and I issue an order of possession to the landlords.

It is undisputed that the rental unit was provided to the tenants for the term of the male tenant's employment. It is undisputed that the male tenant signed a written employment contract with his employer and initialled beside clause 2.3, agreeing that the rental unit was offered to him as a term of his employment and that he had to vacate if his employment was terminated. It is also undisputed that the male tenant's employment was terminated effective June 17, 2019, pursuant to a termination letter of the same date, issued to the male tenant. That termination letter also indicates that the tenants must vacate the rental unit and references clause 2.3 of the contract.

I do not find it necessary for the parties' written tenancy agreement to indicate that the rental unit was offered to the tenants on the basis of the male tenant's employment. Both parties dispute whether an employment clause was added by the landlords after the tenants signed it.

I find that the male tenant's employment contract indicates in clauses 2.1, 2.2 and 2.3 that the rental unit is only offered to him as a term of his employment and if his employment is terminated, the tenants have to vacate the rental unit. The above clauses also indicate that the tenants are required to separately sign a tenancy agreement for the rental unit.

Accordingly, I find that the landlords' 1 Month Notice meets the requirements of section 48(2) of the *Act*. Pursuant to section 55 of the *Act*, if I dismiss the tenants' application to cancel the 1 Month Notice, the landlords are entitled to an order of possession if the 2 Month Notice meets the requirements of section 52 of the *Act*. I find that the landlords' 1 Month Notice complies with section 52 of the *Act*.

I find that the landlords are entitled to an **Order of Possession effective at 1:00 p.m. on January 31, 2020**, pursuant to section 55 of the *Act*. During the hearing, the landlord asked for an order of possession effective on this date, to allow the tenants extra time to vacate after the holiday season.

As the tenants were unsuccessful in their application, I find that they are not entitled to recover the \$100.00 filing fee from the landlords.

Conclusion

The tenants' entire application is dismissed without leave to reapply.

I grant an Order of Possession to the landlords **effective at 1:00 p.m. on January 31, 2020**. Should the tenants or anyone on the premises 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: December 02, 2019

Residential Tenancy Branch