Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNE

Introduction

This Application dealt with the tenant's request pursuant to the *Residential Tenancy Act* (the *Act*) for cancellation of the One Month Notice to End Tenancy for End of Employment (the Notice), pursuant to section 48.

The landlord (IK) and the tenant (RN) were in attendance. Both parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant served the notice of hearing by registered mail (the tracking number is reproduced on the cover page of this decision) on December 20, 2019. The tenant did not serve the evidence. The landlord served his evidence to the tenant by fax and the tenant confirmed he received it and had time to review it. In accordance with sections 88 and 89 of the Act, I find the Notice of Hearing and the landlord's evidence were duly served.

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 is compliant with the *Act*.

Preliminary Issue – Evidence

The tenant submitted as evidence photocopies of cheques and a Notice of Rent Increase. These documents were not served to the respondent, so he is not aware of their content. I have excluded this evidence per section 3.14 of the Rules of Procedure.

Issue to be Decided

1. Is the tenant entitled to cancellation of the Notice?
2. If the tenant's Application is dismissed, is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*?

Background and Evidence

While I have turned my mind to all the evidence provided by the parties, including documentary evidence and the testimony of the parties, not all details of the submission and arguments are reproduced here. I explained to the parties it is their obligation to present the evidence produced.

The tenant testified the tenancy started in March 2016, there was a written tenancy agreement that could not be located, rent is $586.00 per month and is due on the first day of the month. A security deposit of $275.00 was collected at the outset of the tenancy and the landlord still holds it in trust. There are no rental arrears. The landlord did not dispute this testimony.

Both parties agreed the Notice was served on December 13, 2019 by fax. The effective date of the Notice is January 31, 2020.

A copy of the Notice was provided. The ground to end the tenancy cited in the Notice is: 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 Notice also specifies that: "Apt #10 is required for new live-in manager. QT 1526 Pandora Avenue, Victoria, BC, V8R 1A8".

The landlord testified the tenant started working as a manager on November 01, 2018 and worked until January 2020, when he resigned the job. There was a verbal agreement that during the period the tenant worked as a manager he did not pay rent as compensation for his work.

The landlord also testified the tenant paid the rent of January and February 2020. However, he was asked not to make these payments.

The landlord also testified he hired a new manager and the new manager must live in the apartment occupied by the tenant. There are no apartments available in the 17-unit building.

The tenant testified he started working as a manager on November 01, 2018 and worked until mid-January 2020. The tenant paid rent from the begging of the tenancy until October 31, 2018 and resumed paying rent in January 2020. There was no written work contract.

The tenant testified the only time he was told his rental unit was part of the verbal work contract was when he communicated the landlord he would no longer work as a manager.

The written communication between the landlord and the tenant dated January 02, 2020 (exhibit L2) says:

> You are not authorized to pay rent in my Manager Designated Suite. As you plan to stop Managing 1526 Pandora Avenue, you can not on your own decide how I operate my property. My instruction to you is not to deposit any monies as rent for the Manager Designated Suite. Since you are leaving the position, the suite #10-1526 Pandora is required and I plan to attempt to have a speedier legal process for my new Manager.[…]

The next day the tenant replied to the landlord (exhibit L1):

> Thanks Irving, as my suite was never designated as managers suite my expectation, and legal requirements is to pay rent as required. […]
> I was never informed until the day you chose to evict me. I will be depositing the rent cheque today with the others to prevent you evicting me based on unpaid rent. As for February, I will provide a rent cheque, it is your choice to deposit it or not.

Analysis

Section 48 of the Act allows a landlord to end a tenancy due to the end of employment:

> 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.
> (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.

The landlord is attempting to end this tenancy because the tenant no longer works as a manager.

The landlord served the Notice on December 13, 2019, and the tenant filed this application on December 17, 2019. I find that in accordance with Section 48 (5) of the Act, the tenant's application was submitted before the ten-day deadline to dispute the Notice.

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on the balance of probabilities, that notice to end tenancy is valid. This means that the landlord must prove, more likely than not, that the facts stated on the notice to end tenancy are correct.

The testimonies provided by the parties were conflicting in regard to the condition of the rental unit being rented for the term of the employment. The landlord stated there was a verbal agreement regarding this condition. The tenant stated the only occasion the landlord informed him that the rental unit was rented for the term of the employment was when he resigned the job.

The written communication and other documents provided by the landlord do not prove the rental unit was rented for the term of the employment. Both parties agree the tenancy started two and half years prior to the employment and the tenant claims he only became aware of any relationship between the terms of his employment and his tenancy agreement when he received the Notice.

A useful guide in regard to residential tenancy employment is found in Davidsen v. Buchanan of B.C. Ltd. (1979), A791845 (B.C.S.C.):

> The landlord gave notice to a tenant to vacate premises […] The tenant occupied premises in the building when she was hired as a caretaker. When the building was sold, all tenants were notified that there would no longer be a resident manager and the caretaker was told her serviced would no longer be required. Notice was given to the tenant indicating that her suite was required for a new resident manager. When the notice was given, the tenant ceased to be caretaker. An order upholding the validity of the notice

> to end tenancy was set aside. If a landlord is to be empowered to give notice to a tenant to vacate residential premises, as a consequence of the tenant's ceasing to be a caretaker of that premises, the landlord must show that the occupation of the subject premises was a condition of employment and conditional upon the continuance thereof. When evidence clearly shows that the respective tenant did not occupy the premises as a condition of employment, but was, rather, an ordinary tenant, notice given under this section is invalid. In addition, the upholding of such notice by the rentalsman in the face of insufficient evidence to justify that finding constitutes a reviewable error of law.

In this case, the tenant's testimony was more credible and supported by exhibit L1. I therefore accept the tenant's version that there was no agreement in regard to the rental unit being rented for the term of the employment.

Based on the above, I find that the landlord has not met his onus to prove the condition of Section 48(1)(a) of the Act, and the Notice is therefore cancelled and of no force or effect. This tenancy will continue in accordance with the *Act.*

Conclusion

The One Month Notice is cancelled and of no force or effect.

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: February 24, 2020

Residential Tenancy Branch