



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNE, OLC, MNDCT, FFT, OPE

Introduction

This hearing dealt with cross-applications filed by the parties. On August 4, 2020, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for End of Employment (the “Notice”) pursuant to Section 48 of the *Residential Tenancy Act* (the “Act”), seeking an Order to Comply pursuant to Section 62 of the *Act*, seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On August 10, 2020, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on the Notice pursuant to Section 48 of the *Act*.

The Tenant attended the hearing, and A.C. attended on her behalf. G.B. attended the hearing as an agent for the owner of the rental unit. All parties provided a solemn affirmation.

The Tenant advised that she served G.B. the Notice of Hearing package by hand on August 12, 2020 and he confirmed receipt of this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served with the Notice of Hearing package.

She also stated that she served G.B. her evidence by hand on August 31, 2020 and he confirmed receipt of this. Based on this undisputed testimony, as this evidence was served in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have accepted the Tenant’s evidence and have considered it when rendering this Decision.

G.B. advised that the Tenant was served with the Landlord’s evidence on or around

August 14, 2020 by posting it to her door. The Tenant confirmed that she received this evidence. As this evidence was served in accordance with the timeframe requirements of Rule 3.15 of the Rules of Procedure, I have accepted the Landlord's evidence and have considered it when rendering this Decision.

During the hearing, I advised the Tenant that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other and that I have the discretion to sever and dismiss unrelated claims. As such, I advised the Tenant that this hearing would primarily address the Landlord's One Month Notice to End Tenancy for End of Employment, that her other claims would be dismissed, and that she is at liberty to apply for these claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

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*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on August 15, 2019, that rent was currently \$425.00 per month, and that it was due on the first day of each month. A security deposit of \$212.50 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence for consideration.

G.B. advised that he served the Notice by posting it to the Tenant's door on July 24, 2020. The reason that was checked off on the Notice was: the "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 date of the Notice was noted as August 31, 2020.

He stated that as per the owner's request, the Tenant's services as property manager were no longer needed, and her employment was terminated via a letter dated May 16, 2020. He stated that he was hired approximately three months ago, by the owner of the rental unit, to be the new property manager. He was put in contact with the Tenant and she was introduced to him as the current property manager. The Tenant provided him with information on the existing rent roll, she gave him the keys to the building, and she always answered any questions he had regarding the business dealings with the residents of the building. There were also many rental documents with her signature on them. Furthermore, documents for renovation work done on the property by tradespeople were signed by the Tenant.

He submitted that the Tenant's rent is below market value and was at that rate because she conducted duties as the property manager, in lieu of full rent. He stated that after she was served the May 16, 2020 termination letter, she then gave the Landlord cheques for \$425.00 from May 2020 to pay a total of \$850.00 per month in rent. He is not sure why she did this as there was never a discussion about agreeing to this; however, the Tenant was given rent receipts for use and occupancy only for these extra amounts. He advised that the rental unit will be occupied by a new property manager once the Tenant gives up vacant possession.

The Tenant advised that she lived in a different rental unit with A.C. and he was the property manager at the time. She assisted him with these duties. There was a fire in the building in 2018 and she was required to vacate that unit. However, she went back to that unit and took related management files with her. A.C. later advised her that she could live in unit 103 and not pay rent, or live in unit 203 and pay half the rent and a security deposit. She signed the current tenancy agreement, applicable to this Application, for unit 203 and A.C. signed this agreement on behalf of the Landlord. She

stated that she paid \$425.00 per month for rent and that A.C. paid the Landlord an additional \$425.00 on her behalf. She submitted that unit 103 was the unit reserved for the property manager; however, she acknowledged that when she signed this tenancy agreement in 2019, she became the “de facto manger” of the building.

She stated that once she received the letter of termination, she gave G.B. all of the keys and the list of all the residents in the building. She advised that she had a verbal agreement with A.C. that once the new property manager took over, her new rent would be \$850.00 per month.

A.C. advised that he was the property manager and that the Tenant was his long-time assistant. After he had a stroke, he could no longer manage the building, so he rented the rental unit to the Tenant for \$425.00 per month because she conducted the duties of the property manager. Further, he had authorization from the owner to rent the unit to the Tenant for a reduced rent, in lieu of the duties she conducted.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

I have reviewed the Landlord’s Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I find that the Notice meets all of the requirements of Section 52.

The undisputed evidence before me is that the Tenant received the Notice on or around July 24, 2020. According to Section 48(2) of the *Act*, “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.”

While the tenancy agreement submitted into evidence does not specifically stipulate that the Tenant was employed by the Landlord and that the rental unit was rented or provided by the Landlord during the term of employment, the consistent and undisputed evidence before me is that the Tenant conducted all of the same duties that a property manager would. Furthermore, A.C. testified that he had authorization to rent the unit to the Tenant for a reduced amount of rent on account of the duties that she performed as

the property manager. Moreover, the Tenant confirmed that once she received the May 16, 2020 letter of termination, she attempted to pay extra rent as of May 2020.

Based on the evidence before me, I find it reasonable to conclude that the rental unit was provided as part of an employment arrangement with A.C., who had represented the Landlord at the time, and that she was compensated in lieu of completing duties as the property manager. Given that she had attempted to pay more rent after being served the termination notice, it is clear to me that it was her belief that she was acting as the property manager and being compensated for it.

As such, I am satisfied that there is enough evidence before me to justify the Landlord checking off the reason on the Notice that the “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.”

As I am satisfied that the Landlord’s Notice is valid, I find that the Landlord is entitled to an Order of Possession based on this employment arrangement ending. As such, I grant the Landlord an Order of Possession that takes effect at **1:00 PM on September 30, 2020 after service of this Order** on the Tenant. The Landlord will be given a formal Order of Possession which must be served on the Tenant. If the Tenant does not vacate the rental unit, the Landlord may enforce this Order in the Supreme Court of British Columbia.

As the Tenant was not successful in her claim, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

Based on the above, I dismiss the Tenant’s Application for Dispute Resolution with respect to disputing the Notice. The remaining claims on the Tenant’s Application are dismissed with leave to reapply.

I grant an Order of Possession to the Landlord effective at **1:00 PM on September 30, 2020 after service of this Order** on the Tenant. Should the Tenant, or any occupant 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: September 14, 2020

Residential Tenancy Branch