



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0730235 BC LTD. OA Fontana
Gardens and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC-MT, OLC, FFT

Introduction

This hearing was convened in response to an application dated September 2, 2020 by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 48;
2. An Order allowing more time to dispute the notice to end tenancy - Section 66;
3. An Order for the Landlord’s compliance - Section 63; and
4. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Landlord confirms its email address as set out in the Tenant’s application.

Issue(s) to be Decided

Does the Tenant require more time to dispute the notice to end tenancy?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Background and Evidence

The following are agreed or undisputed facts: The tenancy started in 2000 with rent of \$780.00 payable on the first day of each month. At the outset of the tenancy the Landlord collected \$330.00 as a security deposit and the Landlord still holds this security deposit. On December 1, 2005, the Tenant started employment with the Landlord and was provided with a rental unit along with the employment position as set

out in an employment letter dated December 1, 2005. This letter sets out that upon termination of employment it would be the Tenant's choice whether or not to move out of the unit. On March 1, 2010 a new employment agreement was entered into without any terms for accommodation. The Tenant remained in its unit and the Landlord continued to collect rent for the unit. On January 29, 2020 the employment ended. Rent of \$1,422.00 is currently payable on the first day of each month. On August 25, 2020 the Landlord served the Tenant with a one month notice to end tenancy for end of employment (the "Notice") by registered mail. The reason stated on the Notice is that the rental unit is part of the Tenant's employment that has ended, and the Landlord intends to provide the unit to a new caretaker, manager or superintendent.

The Landlord states that although a rental unit was not provided to the Tenant under the terms of its employment in 2010, it was always understood between the Parties that the unit occupied by the Tenant since 2010 was the caretaker unit. The Landlord states that after the employment ended some time was taken to obtain new services for the building and then the emergency order came into effect stopping the Landlord from serving the Notice sooner than it did. The Landlord states that a new caretaker, a current resident of the building, has been offered a position conditional on the Tenant's two-bedroom unit becoming available. The Landlord states that the offer was made to a person who resides in a one-bedroom unit and that an extra bedroom is required as office space for the new employee.

The Tenant states that two other two-bedroom rental units were available for a new employee in June 2020. The Tenant states that it was never understood by the Tenant that it would have to give up its rental unit at the end of its employment. The Tenant confirms that its claim for an order for compliance is in relation to the tenancy continuing.

Analysis

Section 48(5) of the Act provides that a tenant may dispute a notice to end tenancy for end of employment by making an application for dispute resolution within 10 days after the date the tenant receives the notice. Based on the undisputed evidence that the Tenant was given the Notice by registered mail on August 25, 2020 and considering that the Tenant made its application within 10 days from that date, I find that the Tenant made its application to dispute the Notice within the time allowed. I therefore dismiss this claim.

Section 48(1) of the Act provides that 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.

Based on the undisputed evidence that the new employment arrangement that commenced March 1, 2010 does not include any terms for the provision of the rental unit for the term of the Tenant's employment and that the Tenant continued to occupy and pay rent for its unit after March 1, 2010, I find that the Landlord has not substantiated that the unit was provided as part of the employment or that it could end the tenancy when the employment ended. The Notice is therefore not valid for its stated reason and the Tenant is entitled to its cancellation. The tenancy continues. As the tenancy is continuing, I dismiss the claim for the Landlord's compliance.

As the Tenant's claim to cancel the Notice has been successful I find that the Tenant is entitled to recovery of the \$100.00 filing fee. The Tenant may deduct this amount from future rent payable in full satisfaction of this claim.

Conclusion

The Notice is cancelled, and the tenancy continues.

I grant the Tenant an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: October 16, 2020

Residential Tenancy Branch