



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vail Resorts (Whistler Blackcomb), WB HOUSE (Vail Resorts, Whistler Blackcomb)
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, CNE, DRI

Introduction

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

- A monetary award for damages and loss pursuant to section 67;
- Cancellation of a 1 Month Notice to End Tenancy for End of Employment pursuant to section 48; and
- Dispute of a rent increase pursuant to section 43.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlords were represented by its agents and counsel. Counsel MV (the "landlord") primarily spoke on behalf of the landlords.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing the landlord provided the correct names of the respondents. With the tenant's consent the name of the respondents was amended and the corrected names are used in the style of cause for this decision.

Residential Tenancy Rule of Procedure 2.3 allows me to dismiss claims that are not sufficiently related to each other. I find that the portions of the tenant's application seeking a monetary award and disputing rent increase are not sufficiently related to the tenant's dispute of the notice to end tenancy. Consequently, I dismiss all but the portion of the application disputing the notice to end tenancy with leave to reapply.

Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not are the landlords entitled to an Order of Possession?

Background and Evidence

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

The parties agree on the following facts. This periodic tenancy began in 2016. The current rent is calculated as \$9.29/daily which is charged to the tenant by being deducted from their employment payment every bi-weekly pay period.

The tenant has not performed duties of employment for several months due initially to injuries suffered by the tenant and subsequently due to the landlord's operations halting in accordance with provincial health orders. The tenant takes the position that their employment has not been terminated as they have an active claim through WorksafeBC. The landlord submits that the employment was terminated in the spring of 2020.

The landlord submits that the rental unit was provided to the tenant as part of the terms of their employment and as the tenant is no longer employed by the landlord they have ceased to qualify for continued occupation of the unit. The landlord submits that they delayed issuing a Notice to End Tenancy during the period when all notices to end tenancy were suspended by the provincial emergency order. They subsequently attempted to agree to a date to end the tenancy and when those attempts failed issued an email on November 30, 2020 providing an end of tenancy date of January 1, 2021. The tenant filed their present application to dispute that notice on December 21, 2020. The landlord subsequently issued a 1 Month Notice to End Tenancy on the prescribed form on March 9, 2021 with an end of tenancy date of April 30, 2021.

Copies of the correspondence between the parties, an unsigned housing agreement, and notices were submitted into evidence.

The tenant submits that tenancy is not contingent on employment and points to a portion in the Housing Agreement that provides for an occupant to indicate whether they are an employee of the landlord. The tenant submits that because the agreement form provides for non-employees then employment must not be a prerequisite for residence in the rental unit.

Analysis

While the tenant filed an application to dispute a Notice to End Tenancy in response to email correspondence prior to an actual notice being issued on March 9, 2021, based on the testimonies of the parties I find it clear that the landlord is seeking an Order of Possession on the basis that the tenant's employment with the landlord has ended and they no longer qualify for the tenancy and that the tenant disputes the landlord's position. Both parties testified that they are in receipt of all of the respective materials and are prepared to proceed. Therefore, while the tenant has not filed an amendment to their initial application to include disputing the notice dated March 9, 2021, I find the parties sufficiently served with the respective materials in accordance with section 71 of the *Act*.

Section 48 provides that a landlord may end the tenancy of an employee whose rental unit is provided by the employer during the term of employment if the employment is ended.

I find that the present tenancy is predicated on the tenant's continued employment by the landlord. While the copy of the Housing Agreement submitted does allow for non-employees, a blank form which does not specify the rental address or the parties is of limited probative value. Based on the preponderance of evidence including the landlord's agents' sworn testimony, correspondence between the parties and some of the tenant's own materials, it is clear that the rental unit is intended for employees of the landlord and the tenant began their tenancy when their employment commenced.

I accept the evidence of the landlords that the tenant's employment has ended and that they no longer qualify for the rental unit. While the tenant makes reference to an ongoing WorksafeBC claim I find insufficient evidence that they remain an employee of the landlord. The landlord provided consistent testimony that the employment was terminated, submitted documentary materials referencing the end of the employment and both parties gave evidence that the tenant has not performed any of the duties of employment for close to a year.

Accordingly, I find on a balance of probabilities that the landlord has established that the tenancy was provided for employees and that the tenant's employment has now ended.

I find that the copy of the Notice to End Tenancy for March 9, 2021 meets the form and content requirements of section 52 of the *Act* as it is signed and dated by an agent of the landlord, provides that rental address, the names of the parties and the basis for the tenancy to end.

Consequently, I dismiss the tenant's application to cancel the 1 Month Notice and issue an Order of Possession in the landlord's favour for the effective date of the notice, April 30, 2021 pursuant to section 55 of the *Act*.

Conclusion

The portion of the tenant's application seeking to cancel the 1 Month Notice to End Tenancy is dismissed without leave to reapply. The balance of the tenant's application is dismissed with leave to reapply.

I grant an Order of Possession to the landlord effective **April 30, 2021**. 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: March 18, 2021

Residential Tenancy Branch