



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT, CNC, OLC**

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for End of Employment (the "1 Month Notice") pursuant to section 48;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee from the landlord pursuant to section 72.

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 parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

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*.

Issue(s) to be Decided

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

Should the landlord be ordered to comply with the Act, regulations, or tenancy agreement?

Is the tenant entitled to recover the filing fee from the landlord?

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 approximately 35 years ago when the tenant began residing in the rental unit. The landlord assumed this tenancy when they purchased the rental property in April 2021. The current monthly rent is \$500.00 payable on the first of each month. The monthly rent includes utilities. The rental property is a multi-unit building consisting of 5 separate units.

The parties agree that the tenant has never been employed by the landlord as a caretaker, manager or superintendent of the residential property. The parties did provide testimony that the tenant was employed by previous owners of the property.

The landlord issued a 1 Month Notice dated August 30, 2021 which states that the rental unit was provided to the tenant by the previous property owner as a term of employment. The landlord did not assume the employment contract for the tenant when they took possession of the property and assumed the tenancy. The landlord intends to hire a new caretaker and provide the rental unit to their employee.

The tenant confirmed receipt of the 1 Month Notice on August 31, 2021 and filed their application for dispute resolution on September 2, 2021. The tenant has continued to reside in their suite and has paid monthly rent in the amount of \$500.00 to the landlord.

The landlord submits that the rental unit is the Manager's Suite and the suite was provided to the tenant as a term of their employment. As the landlord has never employed the tenant they have issued the 1 Month Notice.

Analysis

Section 48 of the *Act* provides that upon receipt of a notice to end tenancy for end of employment, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice.

Section 48(1) provides the elements for a notice to end tenancy for 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.

In the present circumstance I accept the undisputed evidence of the parties that the tenant has never been employed by the landlord. The landlord submits that the rental unit was provided to the tenant as a term of their employment by the previous property owner but I find insufficient evidence to support this position.

While it is undisputed that the tenant was employed by the previous property owner I find little evidence that the rental unit was provided as a term of their employment. The landlord failed to provide a written tenancy agreement, employment contract or even correspondence where the issue is addressed.

The landlord suggest that the monthly rent of \$500.00 is evidence that the rental unit is rented as a term of employment as the amount is below market rate. I find the landlord's submission to be unconvincing. There are a multitude of reasons why parties may set rent at a certain amount and in the absence of evidence to demonstrate that there is a link between the monthly rent and the status of employment I do not find the amount to be evidence that the rental unit was provided as a term of employment.

I further note that while the landlord completed their purchase of the rental property in April 2021 it was not until August 30, 2021 that the landlord issued the 1 Month Notice. The evidence of the parties is that for the months of May, June, July and August 2021 the tenant made monthly rent payments in the amount of \$500.00 which were accepted by the landlord. The parties gave evidence that since the issuance of the 1 Month Notice the tenant has continued to pay rent in the amount of \$500.00 which has been accepted by the landlord. No evidence was provided that these payments were accepted for use and occupancy only.

A tenancy agreement is defined in section 1 of the Act as "an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit".

In the present circumstance, based on the totality of the evidence before me I find that there is a valid and enforceable tenancy agreement between the parties wherein the tenant pays monthly rent in the amount of \$500.00 which includes utilities for the rental unit. I do not find evidence that this tenancy is provided as a term of employment or that the tenant's employment as caretaker, manager or superintendent of the rental property is related to the existence of this tenancy agreement.

I find that the landlord has not established on a balance of probabilities that the rental unit was rented or provided to the tenant for the term of their employment. Consequently, I allow the tenant's application and cancel the 1 Month Notice.

As noted above, I find that there is a valid and enforceable tenancy agreement between the parties. This tenancy continues until ended in accordance with the *Act*.

As the tenant was successful in their application, they are entitled to recover the filing fee for their application. As this tenancy is continuing the tenant may satisfy this monetary award by making a one-time deduction of \$100.00 from their next scheduled rent payment.

Conclusion

The tenant's application is successful. The 1 Month Notice of August 30, 2021 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

The tenant is authorized to make a one-time deduction of \$100.00 from their next scheduled rent payment.

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: January 14, 2022

Residential Tenancy Branch