



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNE, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order cancelling a notice to end the tenancy for end of employment with the landlord, and to recover the filing fee from the landlord for the cost of the application.

Both tenants named in the application attended the hearing with Legal Counsel, who represented the estate of a deceased tenant. An agent for the landlord also attended, accompanied by Legal Counsel. The landlord's agent and a witness for the landlord each gave affirmed testimony. The parties' Legal Counsel were given the opportunity to question the landlord's agent and the witness, and to give submissions.

At the commencement of the hearing, Legal Counsel for the estate of the deceased tenant applied to amend the Style of Cause, which was not opposed by the landlord's Legal Counsel, and the frontal page of this Decision reflects that amendment.

Also, during the hearing I was unable to open the evidence provided and advised the parties that I would attempt to have that corrected prior to writing this Decision. I now have access to all evidence uploaded by the parties. No further issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the One Month Notice to End Tenancy for Cause or End of Employment was issued in accordance with the *Residential Tenancy Act*, or should it be cancelled?

Background and Evidence

The landlord's agent is the Regional Operations Manager for the landlord, and testified that the landlord manages 4000 units of subsidized housing, which are rented based on income, family, disability and other factors.

This tenancy began at the time of employment as a building manager, covered under a Collective Agreement, so no rent was payable and no tenancy agreement exists. The rental unit is an apartment in a complex and the employee (KA) was the building manager.

A written statement has also been provided as evidence for this hearing wherein the landlord's agent advises that another tenant from the landlord's property (BO) moved in with the employee (KA) in 2009. It also states that the employee (KA) passed away on September 21, 2021 while employed by the landlord, but on medical leave.

The representative of the employee (BO) still resides in the rental unit and requested subsidized housing, which was reviewed but did not meet the criteria.

On December 2, 2021 the landlord's agent sent a letter to the tenant's representative (BO) to advise that the landlord would be taking back the rental unit. A copy of the letter has been provided for this hearing, however the landlord's agent testified that it contains an incorrect address. Two rental units were combined to make one unit.

Another letter also dated December 2, 2021 was sent to the tenant's representative to advise the estate of the employee that a notice to end the tenancy was included with the letter, but the landlord's agent believes that the Notice was sent under separate cover.

The landlord's agent further testified that there was no tenancy; the employee started to reside in the apartment at the time of employment, sometime prior to 2009, and resided there as a resident manager, as set out in the Collective Agreement, a copy of which has been provided for this hearing. At one time the Collective Agreement contained a term that the fee for residing in the apartment was \$50.00 per month, however it was reduced to \$0 in bargaining.

The landlord issued a One Month Notice to End Tenancy for Cause or End of Employment, and a copy has been provided for this hearing. It is addressed to the Estate of KA, c/o BO, dated December 16, 2021 and contains an effective date of

vacancy of February 28, 2022. It was sent by registered mail however it was picked up by another person, and a copy of the Canada Post tracking document has been provided for this hearing. It was also served by email.

The landlord's witness (RS) testified that he is the Director of Employee Relations and Occupational Health and Safety for the landlord, and is familiar with the previous employee (KA) who was employed as a resident building manager for the unionized landlord. Terms and conditions are found in the BCGEU Collective Agreement and Maintenance Services Division. It was also a term of employment that the resident building manager reside in the apartment, which was solely for the duration of employment. The Collective Agreement applied to the employee's employment and residency. The employee was hired in a competition, in the role of resident manager, and into the apartment.

The witness also testified that the Collective Agreement contained a term of a \$50.00 per month fee by the employee to the landlord for many years, which was reduced in the most recent negotiations. The Collective Agreement specifies that the suite does not go with the employee; when employment ends, the person has no access to the suite, and would have to move out. The employee died on September 21, 2021 while he was still an employee, but was on long term disability leave prior. The witness was officially notified on October 18, 2021 that the employee had passed away.

The witness does not know when the employee started to reside in the apartment but believes it was more than 10 years ago. When an employee is off for an extended period, Operations of the landlord would determine what cost the employee would pay. In this case, the employee paid some rent, perhaps \$750.00 but the witness is not certain of the amount.

The witness sent an email to the spouse of the employee (BO) on December 17, 2021 advising that 2 letters had been sent to (BO) by registered mail along with an enclosure, and seeks an acknowledge receipt by return email. The witness received a response dated December 23, 2021.

SUBMISSIONS OF LEGAL COUNSEL FOR THE ESTATE:

The landlord has purported to end the tenancy however Section 1 of the *Residential Tenancy Act* is the definition section and states that "tenant" includes the estate of a deceased tenant, and when the context requires, a former or prospective tenant. The estate of a deceased cannot be a tenant.

With respect to Section 48 (2), the rental unit was rented for the term of employment, which has ended. There is no issue of his death. However, the rental unit was rented for a term of employment.

Rule 6.6 states that the landlord has the burden of proof on a balance of probabilities, and a tenancy can be oral or implied. The employee (KA) had been both an employee and a tenant for well over 15 years, albeit no evidence of the actual length of the tenancy. The employee was bound by terms of the Collective Agreement stating that rent will be reduced for his work and while working rent was reduced to \$50.00 or to \$0. But while not working, the landlord collected rent during the tenancy.

The landlord's witness said during a time the employee was charged rent up to \$750.00 per month. In September, 2021 the employee passed away, ending his employment. The landlord must prove the employee was granted the rental unit for the term of employment, but has not met that burden. There is no evidence provided showing that the rental unit was provided as part of employment. There is no tenancy agreement and no evidence of when the tenancy actually started, no clause in the Collective Agreement that tenancy will be revoked by cessation of employment, but says as compensation "...after normal work period, the tenant will receive reduced rent." It does not indicate the building manager will get use of the rental unit or be granted tenancy or a tenancy with reduced rent, but simply that the employee will receive reduced rent. The landlord collected rent during periods the employee was not working.

The tenancy is independent of rent reduction, and the landlord charged rent which is consistent with a tenancy. A Collective Agreement cannot create a tenancy because there are no standard terms. The Collective Agreement acts as a waiver or reduction of rent only.

SUBMISSIONS OF THE LANDLORD'S LEGAL COUNSEL:

Legal Counsel for the employee is trying to create a different tenancy, but it's artificial. The suite was provided for the employee to occupy during employment, and not permitted to stay after employment has ended, and the landlord is entitled to have the suite back.

There is no evidence of a separate or different tenancy, and the submission that while on long term disability and not able to do the duties, the employee was required to pay rent, but that was still during his employment, clearly in the context of an employer/employee relationship.

The suite was provided only during employment and the employee is required to leave at the end of the employment. There is no independent tenancy agreement, and the landlord seeks an Order of Possession.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*. In this case, the landlord served a One Month Notice to End Tenancy for Cause or End of Employment in the form approved by the *Act*, after learning that the employee had passed away. The approved form contains information for a tenant about the tenant's rights and responsibilities under the *Act*.

The landlord's position is that the "tenancy" was a term of employment, bound by the terms of a Collective Agreement, which was changed during the last round of negotiations between the landlord and the employee, and that there is no independent tenancy agreement. If no tenancy exists, the landlord cannot issue a notice to end the tenancy under the *Residential Tenancy Act*. If a tenancy exists, the landlord bears the burden of proving on a balance of probabilities that the notice to end the tenancy was given under the *Act*. It can't work both ways – either the *Act* applies or it doesn't. If there is no tenancy, the landlord cannot end it with a Notice under the *Act*, and if a tenancy existed, then the standard terms apply. However, my authority is under the *Act*, and if no tenancy exists, I must decline jurisdiction.

Counsel for the estate of the tenant submits that the *Act* does apply by virtue of the rent paid by the tenant to the landlord while the tenant was on long term disability and previously.

The Collective Agreement states: (b) As compensation for living on the job and responding to emergency situations that arise after the Building Manager's normal daytime work period, the Building Manager shall receive a reduced rent as shown in Clause 11.1 Wage Rates." The reduced rent is currently \$0, and was previously \$50.00 per month, but has been as much as \$750.00 per month at some point while the tenant was not working.

The *Residential Tenancy Act* sets out what the *Act* applies to and what it does not apply to:

2 (1) Despite any other enactment but subject to section 4 [*what this Act does not apply to*], this Act applies to tenancy agreements, rental units and other residential property.

4 This Act does not apply to

(a) living accommodation rented by a not for profit housing cooperative to a member of the cooperative,

(b) living accommodation owned or operated by an educational institution and provided by that institution to its students or employees,

(c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,

(d) living accommodation included with premises that

(i) are primarily occupied for business purposes, and

(ii) are rented under a single agreement,

(e) living accommodation occupied as vacation or travel accommodation,

(f) living accommodation provided for emergency shelter or transitional housing,

(g) living accommodation

(i) in a community care facility under the *Community Care and Assisted Living Act*,

(ii) in a continuing care facility under the *Continuing Care Act*,

(iii) in a public or private hospital under the *Hospital Act*,

(iv) if designated under the *Mental Health Act*, in a Provincial mental health facility, an observation unit or a psychiatric unit,

(v) in a housing based health facility that provides hospitality support services and personal health care, or

(vi) that is made available in the course of providing rehabilitative or therapeutic treatment or services,

(h) living accommodation in a correctional institution,

(i) living accommodation rented under a tenancy agreement that has a term longer than 20 years,

(j) tenancy agreements to which the *Manufactured Home Park Tenancy Act* applies, or

(k) prescribed tenancy agreements, rental units or residential property.

5 (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

In this case, the Collective Agreement specifies "...the Building Manager shall receive a reduced rent," and therefore, I find that the *Residential Tenancy Act* applies.

I have also reviewed the written submissions of the landlord, referring to Residential Tenancy Policy Guideline 13 – Rights and Responsibilities of Co-Tenants, stating, in part that "...if a tenant allows a person to move into the rental unit, the new person is an occupant who has no rights or obligations under the tenancy agreement, unless the landlord and existing tenant agree to amend the tenancy agreement to include the new person as a tenant."

The Notice was not issued to the deceased tenant's spouse, but to the estate of that person, c/o the deceased tenant's spouse. Counsel for the estate of the tenant submits that the estate of a deceased tenant cannot be a tenant. The *Act* defines a "tenant" which includes the estate of a deceased tenant, and when the context requires, a former or prospective tenant. Section 48 states that a "landlord" may end a tenancy of a person employed as a caretaker, manager or superintendent of the residential property by giving Notice to end the tenancy if the rental unit was rented or provided for the term of employment, and that employment has ended, and the landlord intends in good faith to rent or provide the rental unit to a new caretaker, manager or superintendent. An "employer" may end a tenancy by giving notice to end the tenancy if employment has ended. The *Act* also states that a tenant may dispute a notice by making an application for dispute resolution within 10 days after receipt of the Notice. In this case, the

employer is the landlord, and there is no evidence before me that the landlord intends in good faith to rent or provide the rental unit to a new caretaker, manager or superintendent.

I agree with Counsel for the estate of the deceased tenant that a landlord may not issue a notice to end a tenancy to an estate. Considering that the *Act* states that a tenant includes the estate of a deceased tenant, any notice to end the tenancy ought to be addressed to the tenant, not to the estate of the tenant. Therefore, I cancel the Notice.

Since the tenant has been successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee, and I grant a monetary order in favour of the tenant in that amount.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause or End of Employment dated December 16, 2021 is hereby cancelled.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00.

This order is final and binding and may be enforced.

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 11, 2022

Residential Tenancy Branch