



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Girl Guides of Canada
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

TT: CNE FFT

LL: MNRL, OPE, MNDCL, FFL

Introduction

This hearing dealt with applications from both the landlord and tenant pursuant to the *Residential Tenancy Act* (the “Act”).

The tenant applied for:

- cancellation of the landlord’s 1 Month Notice to End Tenancy for End of Employment (the “1 Month Notice”) pursuant to section 48; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord applied for:

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent, damages and loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant 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 tenant was assisted by an advocate and family member. The corporate landlord was represented by an agent and counsel.

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?

Is the landlord entitled to a monetary award as claimed?

Is either party entitled to recover their filing fee from the other?

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 fixed-term tenancy began on May 3, 2021 and was scheduled to end on April 30, 2022. The tenancy was provided as a term of a fixed-term employment contract for a property caretaker between the parties during the same period.

A copy of the Employment Letter of April 23, 2021 was submitted into evidence. The letter is mis-dated April 23, 2020. The letter contains the following information:

There will be a taxable housing benefit of \$4,800 for a house provided for the duration of this contract. Occupancy of this housing will end at the end of this contract on April 30, 2022.

...

Your employment, and housing benefit provided, will automatically terminate on the End Date. You agree that no termination notice or pay in lieu of notice is owed to you upon the termination of this Agreement on the End Date.

In addition, your employment with [the landlord] may be terminated prior to the end date as follows:

Termination for Cause: Your employment may be terminated for cause in accordance with applicable laws. Your housing benefit will end on the date of termination.

Termination without Cause: In the event that [the landlord] decides to terminate your employment, before the End Date, on a without cause basis, [the landlord] shall provide you with reasonable notice representing two (2) weeks' notice of termination, pay in lieu of notice, or some combination of the two, less required statutory deductions and withholdings. Your housing benefit will end on the date of termination.

The tenant was issued a Notice of Termination of Employment on a without cause basis on January 17, 2022. The notice provides the employment terminates on January 31, 2022. The tenant was simultaneously served with a 1 Month Notice dated January 17, 2022 with an effective date of February 25, 2022.

The tenant filed their application to dispute the 1 Month Notice on January 23, 2022. The tenant has continued to reside in the rental unit. The parties agree that the tenant has not been conducting any duties of employment since January 2022.

The landlord seeks a monetary award in the amount of \$3,000.00 comprised of \$800.00, the value of the tenancy for the months of March and April pursuant to the employment agreement, and \$2,200.00 which they say is their loss based on what the fair market value of the tenancy would be at \$1,500.00 per month.

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 circumstances, the parties gave undisputed evidence that the tenancy was provided as a term of the employment contract between them and that this employment ended on January 31, 2022.

I am satisfied, on a balance, that the landlord exercised their right pursuant to the employment contract to terminate this employment on a "without cause" basis. While the tenant inquired about the reason for the termination at the hearing, they made no submissions suggesting that their employment had not ended.

I am further satisfied that the landlord intends in good faith to provide the rental unit to a new caretaker. While the landlord gave some testimony about the potential of renting out the suite, the suggestion lacked cogent details and I find this to be no more than idle speculation. The tenant gave convincing testimony that the rental unit has been occupied by successive caretakers for almost 100 years. I find there is a preponderance of evidence to support the good faith intention of the landlord to provide the suite to a new caretaker.

Based on the totality of the evidence I am satisfied that the landlord has established the basis for the 1 Month Notice. Accordingly, I dismiss the tenant's application and issue an Order of Possession in the landlord's favour. As the effective date of the notice has passed, I issue a notice enforceable 2 days after service on the tenant.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the

party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept the undisputed evidence, supported in the documentary materials that the value of the monthly rent for this tenancy is \$400.00. I accept the undisputed evidence of the parties that the tenant has continued to occupy the rental unit for the months of March and April 2022 after their employment had ceased.

I find little support for the landlord's suggestion that they incurred additional losses as the actual value of the rental unit is far higher than that noted in the employment agreement and they could have rented out the suite on the open market at a much higher rate.

Based on the foregoing, I find the landlord has established a monetary loss of \$800.00, the unpaid rent for the suite for the months of March and April 2022. I therefore issue a monetary award in the landlord's favour for that amount.

As the landlord was successful in their application I allow them to recover their filing fee from the tenant.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenants 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.

I issue a monetary order in the landlord's favour in the amount of \$900.00. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 *Residential Tenancy Act*.

Dated: April 25, 2022

Residential Tenancy Branch