Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNE, FFT

Introduction

This hearing was convened in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied to set aside a One Month Notice to End Tenancy for Cause/End of Employment and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on June 16, 2022 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch in June of 2022 was sent to the Landlord, via registered mail. The Agent for the Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On September 17, 2022 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Tenant, via registered mail, on September 17, 2022. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Preliminary Matter

It is readily apparent that the Landlord believes the Tenants are obligated to pay "market rent" for the unit if they wish to continue living in the rental unit. This is not an issue for me to determine at these proceedings. The only issue to be determined at these proceedings is whether the Landlord has the right to end the tenancy pursuant to section 48 of the *Act*.

In the event the Landlord believes it has grounds to establish that the Tenants are is not paying the correct rent, the Landlord retains the right to serve the Tenants with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities. Whether the Landlord has the right to charge "market rent" would be a matter to be determined at proceedings related to that issue.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy be set aside?

Background and Evidence

The Landlord and the Tenant agree that:

- This tenancy began on July 01, 2020;
- There is a written tenancy agreement that declares rent of $600.00 is due by the first day of each month;
- The female Tenant became employed by the Landlord on October 07, 2019;
- The tenancy began after the female Tenant was employed by the Landlord;
- The female Tenant ceased being an employee of the Landlord on March 05, 2021;
- a One Month Notice to End Tenancy was served to the Tenants because the Tenant's employment with the Landlord has ended.

The Agent for the Landlord stated that the One Month Notice to End Tenancy was sent to the Tenants, by registered mail, on May 25, 2022. The Tenant acknowledges receiving it shortly thereafter.

The Agent for the Landlord stated that:

- the female Tenant became aware that discounted rent was available for employees after the female Tenant began working for the Landlord;

- the female Tenant was given a “deeply discounted” rental rate when the parties entered into the tenancy agreement;
- the discounted rental rate was a benefit given to the female Tenant as a result of her employment with the Landlord;
- it was “well understood” that the reduced rental rate would be in place only while she was employed by the Landlord;
- it was “well understood” that if the female Tenant stopped working for the Landlord she would be required to pay “market rent”;
- there is nothing in the tenancy agreement or the employment contract that specifies her rental rate was tied to her employment;
- there is nothing in writing that establishes the low rental rate was tied to her employment;
- she was not employed by the Landlord on July 01, 2020 but she understands the terms of the reduced rental rate was discussed with the female Tenant when the Tenants entered into the tenancy agreement;
- after the Tenant’s employment ended the Tenant was offered a rental rate that was somewhat lower than “market value”, but the Tenant would not agree to pay it;
- the Landlord did continue to pursue their attempt to increase the rent at that time because the Tenant’s husband was ill;
- they are willing to continue the tenancy if the Tenants agree to pay “market” rent;
- the discounted rent was not provided to the Tenants because the building was going to be demolished, although there are plans to demolish it in the future; and
- improvements were made to the rental unit before the tenancy began.

The Tenant stated that:

- there was no discussion of what would occur with the amount of her rent if she stopped working for the Landlord;
- she was never told that “market rent” would be due if she stopped working for the Landlord;
- there is nothing in her employment contract or tenancy agreement that declares her rent will increase if her employment with the Landlord ends;
- she was offered low rent because the rental unit was subject to demolition/redevelopment;
- some improvements were made to the rental unit before she moved in;
- there was no discussion about her rent increasing if improvements were made to the rental unit; and

- the rental unit was not provided as a term of the tenancy agreement.

The Landlord submitted many documents to support the Landlord's submission that the Tenant is required to pay market rent. I have reviewed all of these documents.

The Landlord submitted a letter addressed to the female Tenant (in her role as an employee), which is apparently from a former employee of the Landlord. In the letter the former employee declares that they will be vacating their rental unit because they acknowledge that their "residence is tied to my employment".

Analysis

On the basis of the undisputed evidence, I find that the Landlord employed the female Tenant between October 07, 2019 and March 05, 2021.

On the basis of the undisputed evidence, I find that the Landlord and the Tenants entered into a tenancy agreement which began on July 01, 2020.

Section 48(1) of the *Residential Tenancy Act (Act*) permits a landlord to end a 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.

On the basis of the undisputed evidence, I find that on May 25, 2022 the Landlord served the Tenants with a Two Month Notice to End Tenancy, by registered mail, which declared that the rental unit must be vacated by June 30, 2022. Although neither party submitted the second page of the One Month Notice to End Tenancy, the parties agree that the reason cited for ending the tenancy on that Notice is that the rental unit is part of the tenant's employment, and the employment has ended.

I find that this notice was proper notice of the Landlord's intent to end the tenancy pursuant to section 48 of the *Act*.

A caretaker, manager, or superintendent of a residential property is typically considered to be the individual who is employed to look after a residential building. On the basis of the information before me, in particular the female Tenant's employment contract, I find that the female Tenant was employed as a Property Administrator. Her duties included various administrative tasks. There is nothing in the employment contract that would suggest she worked as a caretaker, manager, or superintendent of the residential complex in which she lived. I therefore find that the Landlord has failed to establish that the female Tenant was "employed as a caretaker, manager or superintendent of the residential property of which the rental unit is a part".

Section 48 of the *Act* permits a landlord to end the tenancy of an individual who was **"**employed as a caretaker, manager or superintendent of the residential property of which the rental unit is a part". As the Landlord has failed to establish the female Tenant was employed as a "caretaker, manager or superintendent of the residential property of which the rental unit is a part", I find that the Landlord does not have the right to end the tenancy pursuant to section 48 of the *Act*.

Even if the female Tenant was employed as a "caretaker, manager or superintendent of the residential property of which the rental unit is a part" the Landlord would not have the right to end the tenancy because the Landlord has failed to establish that the rental unit was rented or provided to the female Tenant <u>for the term of her employment</u>. Section 48(1)(a) of the *Act* specifies that the Landlord can only end the tenancy if the rental unit was rented or provided to the tenant for the term of his or her employment.

In concluding that the Landlord has failed to establish that the rental unit was provided to the female Tenant for the term of her employment, I was influenced, in large part, by the testimony of both parties. Both parties agree that there was no agreement that the female Tenant would need to vacate the rental unit if her employment with the Landlord ended. As such, I must conclude that the unit was not provided to the female Tenant <u>for the term of her employment</u>.

Even if the female Tenant was employed as a "caretaker, manager or superintendent of the residential property of which the rental unit is a part" the Landlord would not have the right to end the tenancy because the undisputed evidence is that the Landlord is willing to allow the Tenants to continue to live in the residential complex providing the Tenants are willing to pay "market rent". Section 48(1)(c) of the *Act* specifies that the landlord can only end the tenancy of a former caretake/manger/superintendent if the landlord intends in good faith to rent or provide the rental unit to a new caretaker,

manager or superintendent. Clearly this is not the case, given that the Landlord is willing to continue the tenancy of the Tenants.

I find that the Landlord has failed to establish grounds to end the tenancy pursuant to section 48 of the *Act*. I therefore grant the Tenants' application to cancel the One Month Notice to End Tenancy.

I find that the Application for Dispute Resolution has merit and that the Tenants are entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The One Month Notice to End Tenancy is set aside. This tenancy shall continue until it is ended in accordance with the *Act*.

The Tenants have established a monetary claim of $100.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The Tenants have the right to withhold $100.00 from one monthly rent payment if they do not wish to enforce this monetary Order through the Province of British Columbia Small Claims 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: October 15, 2022

Residential Tenancy Branch