



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding INVESTAVE PROPERTIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNE FFT

Introduction

This hearing was convened based on the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) to cancel a 1 Month Notice to End Tenancy for End of Employment and to recover the cost of the \$100 filing fee.

The tenant, a tenant agent, JS (JS) and an agent for the landlord, NL (agent) attended the teleconference hearing. At the start of the hearing, I introduced myself and the participants. The parties were provided with the opportunity to submit documentary evidence prior to this hearing. I have reviewed all oral and documentary evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The agent confirmed that the landlord was served with the tenant's documentary evidence and had the opportunity to review that evidence prior to the hearing. The tenants testified that they did not receive the landlord's documentary evidence, which has not been considered for this Decision as the tenant's documentary evidence were the only documents to be presented at this proceeding.

The email addresses for both parties were confirmed during the hearing. The parties were advised that the Decision will be emailed to both parties.

Issues to be Decided

- Should the 1 Month Notice to End Tenancy for End of Employment be cancelled?

- If no, should the tenancy continue until ended in accordance with the Act?
- If yes, is the landlord entitled to an order of possession under the Act?
- What should happen to the filing fee of \$100 paid by the tenant?

Background and Evidence

A copy of the tenancy agreement and a copy of the employment contract were both submitted in evidence. The employment contract was signed but not dated and related to the tenant's position as Building Manager (Employment Contract).

The tenant confirmed that they received a 1 Month Notice dated August 10, 2022 on August 10, 2022. The effective vacancy date is listed as September 30, 2022. The 1 Month Notice alleges one cause as follows:

- ☒ Tenant's rental unit/site is part of the tenant's employment as a caretaker, manager or superintendent of the property, the tenant's employment has ended and the landlord intends to rent or provide the rental unit/site to a new caretaker, manager or superintendent.

There is no dispute that the tenant signed the Employment Contract to be employed as a Building Manager for the rental building, in which the tenant occupies a rental unit. The agent testified that the rental unit being occupied by the tenant is for the resident Building Manager to reside in.

The tenancy agreement submitted in evidence indicates that monthly rent is \$200 per month. The parties agreed that monthly rent is due on the first day of each month. The tenant confirmed they paid a security deposit of \$700 at the start of the tenancy, which the landlord continues to hold.

The tenant filed their application to dispute the 1 Month Notice on August 10, 2022, which is the same date the 1 Month Notice was served. The agent testified that the 1 Month Notice was issued as the tenant's employment contract as resident Building Manager was terminated and that they had taken a new job outside of the rental building. The tenant's position is that the tenancy agreement does not state that the monthly rent is due to employment purposes and that living in the rental unit was part of the Employment Contract.

The tenant alleges that the tenant was served with the 1 Month Notice in retaliation for the tenant refusing to sign a new tenancy agreement, which the agent stated would be at market rent of \$1,400 given that the tenant's Employment Contract was terminated.

The tenant confirmed that they were terminated as Building Manager and claims that the monthly rent of \$200 was not related to their position as resident Building Manager. The tenant testified that the Employment Contract did not require the tenant to be a resident Building Manager, which I will address later in my analysis below.

Although the tenant and JS alleged throughout the hearing that the landlord issued the 1 Month Notice because the tenant refused to pay the market rent of \$1,400, which was not disputed by the agent, and which I will address later in my analysis below. The tenant and JS said on multiple occasions that the 1 Month Notice was issued within 24 hours of the tenant refusing to sign a new tenancy agreement for a higher monthly rent, which the agent stated was market rent.

The parties did not dispute that the rental building consists of 7 rental unit located above 4 commercial units. The agent confirmed that working in one of the four commercial units in the same building was approved by the owner of the building, as the resident Building Manager would be located inside the rental building to also perform the duties of resident Building Manager. The tenant stated that once their job with HHH ended, the tenant started a job, which the tenant stated was only about five minutes away from the rental building.

There is no dispute that the tenancy agreement states monthly rent is \$200. What is in dispute is whether the \$200 amount reflects a \$1,200 “discount” on monthly rent related to the Employment Contract. The tenant claims that monthly rent can’t increase more than the \$200 and the agent stated that they tenant may stay in the rental building if they sign a new tenancy agreement at market rent.

The parties did not dispute that a new Building Manager has been hired by the owner of the building. The tenant claims the new Building Manager stated to them that they do not want to be a resident Building Manager. The agent stated that they have not been made aware of any comments from the new Building Manager and that the position has been as a resident Building Manager before the tenant was hired in May 2022.

Both parties mentioned SL during the hearing. The agent described SL as her assistant and that he was also her father. The tenant alleged that they were unaware of the agent and that they assumed SL was the agent.

I requested that SL (witness) be called to testify, and after being affirmed, the witness confirmed they are an assistant to the agent only. The tenant and JS allege that the witness advised them previously that the witness had “no issue” with the tenant being a

resident Building Manager. The witness first testified that they said what the tenants stated and then later changed their response and alleging that the undersigned was asking them a “trick question.” The witness then confirmed that if the landlord was not successful in proving that the 1 Month Notice was valid, that the owner of the building would say they were moving in to evict the tenant in another manner.

The witness then requested to ask questions, which was not permitted as the witness was not a party to the dispute. The witness was then thanked for their testimony and excused from the hearing as both parties confirmed they had no questions for the witness.

The agent stated at the end of the hearing that they did not say that they were looking to raise the rent as claimed by the tenants during an earlier meeting. The agent was advised that earlier testimony confirmed that raising the rent was the issue that prompted the 1 Month Notice as the Employment Contract was terminated and that the \$200 monthly rent was not market rent and that there was only a \$1,200 discount when the tenant was employed as the resident Building Manager. The agent stated that this was supported by the tenant paying a security deposit of \$700, which was $\frac{1}{2}$ of the market rent of \$1,400. The tenant stated that a security deposit of \$100 was originally requested, which the agent did not agree with during the hearing. The tenant testified that it was only when the tenancy agreement was provided to them to sign that they noticed the security deposit had changed to \$700 and that the tenant just paid it so they would not lose their job as the Building Manager.

The agent confirmed that the tenant has paid for use and occupancy of the rental unit for the month of November 2022. The agent stated that the owner of the building insists on a Building Manager being a resident of the building and does not hire Building Managers that will not be residing in the rental building. The agent testified that the new Building Manager is scheduled to move into the rental unit once the tenant vacates and that rental unit is to be occupied by the resident Building Manager.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

When a tenant disputes a 1 Month Notice within 10 days of being served the 1 Month Notice, the onus of proof reverts to the landlord to provide sufficient evidence to support the reason listed on the 1 Month Notice. In this matter, the tenants did dispute the 1 Month Notice on time and the 1 Month Notice relates to the tenant’s employment as the

resident/live in Building Manager, that the employment has ended and that the landlord intends to rent the rental unit to a new caretaker or manager.

Secondly, section 48 of the Act applies to the 1 Month Notice in this matter and states:

Landlord's notice: end of employment with the landlord

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.**

(2) An employer may end the tenancy of an employee in respect of a rental unit rented or provided by the employer to the employee to occupy during the term of employment by giving notice to end the tenancy if the employment is ended.

(3) A notice under this section must end the tenancy effective on a date that is

- (a) not earlier than one month after the date the tenant receives the notice,
- (b) not earlier than the last day the tenant is employed by the landlord, and
- (c) the day before the day in the month, or in the other period on which the tenancy is based, that rent, if any, is payable under the tenancy agreement.

(4) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(5) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(6) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (5), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit by that date.

[emphasis added]

Given the above, I find that I must determine whether or not the tenant was required to be a resident (live in) Building Manager as part of the tenancy agreement and Employment Contract. I have reviewed the evidence before me and the testimony

carefully and I find that both the tenancy agreement and the Employment Contract must be read together as a whole as the Employment Contract states the following:

Employment Contract

Name: Hanna Williams
SIN: [REDACTED]
Date of Birth: [REDACTED]
DL: [REDACTED]
Address: [REDACTED]
Position: Building Manager
Type: live in.

Salary: \$N/A Annually
Rent: \$200.00 monthly

Benefit: Two weeks
Over five years and three weeks

Job Description:

1. Maintain the cleanliness of the building:
 - a. Sidewalk twice a week.
 - b. Lobby, stairway and common corridor.
 - c. Collect monthly rent from tenants. (Commercial and residential)
 - d. Rent out unit and supervise the move in and move out.
 - e. Repair odd jobs and over see contractor.
 - f. Report to property manager.
2. Monitor tenant's complains & request.
3. Change keys and locks with changes of tenant.
4. Standby on emergency on days off and off duty hours.
5. Arrange substitute caretaker for vacation.
6. On call for emergency attendant of properties under NNS Realty Ltd

The under sign will go through a Three months probation period before becoming an indeterminate employee.
The under sign also agree to sworn and maintain the code of silence in regards to any thing that are work related.

Sign: Hanna Williams
Hanna Williams

Sign: Nicole Lam
Nicole Lam, Property Manager.

I find that the Employment Contract clearly indicates the position as Building Manager and immediately below that the type is described as "live in". In addition, the salary is listed as \$NA and that rent is \$200. Based on the above, I prefer the evidence of the agent that the \$200 monthly rent listed on the tenancy agreement was discounted from the market rent of \$1,400 in exchange for the tenant being employed as the resident (live in) Building Manager. I find the tenant's version of events are not believable as the tenancy agreement does not state the security deposit was \$100, and I find it highly unlikely that the tenant would pay a \$700 security deposit if they were advised the security deposit was \$100 earlier. In reaching this finding, the tenancy agreement clearly indicates that the security deposit is \$700, which the agent confirmed is ½ of the market rent of \$1,400 per month for the building manager unit.

In addition, I find the tenants have provided insufficient evidence that the new Building Manager is not expected to reside in the rental building as part of their Employment Contract. I have reached this finding as the tenants failed to provide any witness statements or call the new Building Manager as a witness. I accept the testimony of the

agent that the owner has advised them that every Building Manager is expected to be a resident of the rental building as I find the Employment Contract duties and rental amount confirm that version of events presented to me.

In addition to the above, I find the landlord had the authority to terminate the Employment Contract and that by doing so, the landlord also had the authority to issue the 1 Month Notice. Furthermore section 48(1) of the Act states the following:

- (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.**
- [emphasis added]

Based on the totality of the evidence before me and on the balance of probabilities, I find the rental unit was rented for the term of employment as I read the tenancy agreement and the Employment Contract together as a whole. I also find that the tenant's employment as a building manager/caretaker(manager) has ended and that the landlord in good faith intends to rent the rental unit to the new resident Building Manager, and that it is more likely than not that the new resident Building Manager will also be offered a discounted monthly rent in exchange for the duties listed in the Employment Contract before me, which includes many duties.

I afford no weight to the witness testimony in this matter as I find the witness testimony to be inconsistent. I also find the witness was not confirmed as an agent, and instead is described as an assistant to the agent. I find the tenant's statement that they did not know who the agent was to not be believable as the agent's name is listed on the Employment Contract provided to the tenant/former resident Building Manager.

Given the above, I find the landlord has provided sufficient evidence to support the 1 Month Notice is valid. I also find the 1 Month Notice complies with section 52 of the Act. As such, I dismiss the tenant's application to cancel the 1 Month Notice.

Section 55(1) of the Act applies and states:

Order of possession for the landlord

55(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, **the director must grant to the landlord an order of possession of the rental unit if**

(a) **the landlord's notice to end tenancy complies with section 52** [form and content of notice to end tenancy], **and**
(b) **the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.**
[emphasis added]

Given the above and considering that the tenant has paid for use and occupancy for November 2022, I grant the landlord an order of possession pursuant to section 55 of the Act **effective November 30, 2022 at 1:00 p.m.**

I find the tenancy ended on September 30, 2022, which was the effective vacancy date listed on the 1 Month Notice and has passed.

I do not grant the filing fee as the tenant's application has been dismissed.

Conclusion

The tenant's application to cancel the 1 Month Notice has been dismissed.
The 1 Month Notice issued by the landlord has been upheld.

The landlord has been granted an order of possession effective November 30, 2022 at 1:00 p.m. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The tenant is cautioned that they could be held liable for all costs related to enforcement of the order of possession including court costs and bailiff fees if the tenant refuses to vacate the rental unit as ordered.

The Decision will be emailed to both parties.

The order of possession will be emailed to the landlord only for service on the tenant, as required.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: November 10, 2022