



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding TRIBE MANAGEMENT INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNE, FFT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. On December 11, 2022, the tenant applied for:

- an order to cancel a One Month Notice to End Tenancy for Cause, dated December 9, 2022, (the One Month Notice); and
- recovery of the filing fee.

Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were also made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and Rule 7.4 requiring evidence to be presented.

Neither party raised an issue regarding service of the hearing materials.

Preliminary Matter

As the tenant failed to serve on the landlords a document uploaded to the Residential Tenancy Branch on April 18, 2023, I will not consider it in my decision.

Issues to be Decided

- 1) Is the tenant entitled to an order to cancel the One Month Notice? If not, is the landlord entitled to an order of possession?
- 2) Is the tenant entitled to the filing fee?

Background and Evidence

While I have considered the presented documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

Those present agreed on the following particulars of the tenancy. It began March 1, 2020; rent is \$1,380.00, due on the first of the month; and the tenant paid a security deposit of \$675.00, and a pet damage deposit of \$675.00, which the landlord still holds.

A copy of the One Month Notice was submitted as evidence. The landlord testified they served the One Month Notice on the tenant in person on December 9, 2022, which the tenant confirmed.

The One Month Notice is signed and dated by the landlord, gives the address of the rental unit, states an effective date, states the reason for ending the tenancy, and is in the approved form.

The One Month Notice indicates the reason for the Notice is that the tenant's rental unit is provided by the employer to the employee to occupy during the term of employment and employment has ended.

The Details of the Events section of the One Month Notice states that the tenant's employment was terminated December 9, 2022.

The landlord testified that the One Month Notice was served on the tenant because the unit was provided while the tenant was an employee, and that, pursuant to section 48(2) of the Act, the employer is ending the tenancy because the term of employment has ended. The landlord testified that the Notice is pursuant to a term of the employment agreement, referring me to section 3.2 of that document in evidence, which states:

3.2 Without limiting sections 2.1 and 2.2, the Assistant Caretaker hereby agrees that his tenancy in the Building Owner's Apartment and the tenancy agreement in respect thereof will be terminated effective as of, and that the Assistant Caretaker will give up possession of the Building Owner's Apartment on, the effective date of any termination of the Assistant Caretaker's employment for any reason by either party, or on the day thereafter that any period of notice which may be required by any applicable residential tenancy legislation expires, if different.

The tenant submitted that the landlord has not demonstrated that the tenant's rental unit was rented or provided to the tenant for the term of her employment, pursuant to section 48(1)(a). The tenant submitted that the unit number referred to in the employment agreement is not the number of the tenant's rental unit. Additionally, the tenant submitted that the employment contract is dated October 30, 2019, but that their tenancy in the subject unit began later, on March 1, 2020.

Submitted as evidence is an email dated March 22, 2023 between the tenant and the landlord, in which the landlord confirmed that when the tenant's employment began on November 5, 2019, the tenant was living as an occupant in the unit named on the employment agreement, and was not named on that tenancy agreement. A copy of that tenancy agreement is submitted as evidence, and supports the tenant's testimony.

The tenant testified that at the beginning of her employment she was living in the unit named in the older tenancy agreement, which was established between her long-term partner and the landlord. The tenant testified that the other tenant still resides in his unit and that the subject tenant later moved into a different unit, unrelated to her employment.

Submitted as evidence is a tenancy agreement which names the subject tenant and states that the tenancy began on March 1, 2020.

Analysis

Based on the testimony of the parties, I find the landlord served the tenant the One Month Notice on December 9, 2022, in accordance with section 88 of the Act, and that the tenant received it on the same day.

I find the One Month Notice meets the form and content requirements of section 52 of the Act, as it is signed and dated by the landlord, gives the address of the rental unit, states an effective date, states the reason for ending the tenancy, and is in the approved form.

The standard of proof in a dispute resolution is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is usually on the person making the claim. As described in Residential Tenancy Branch Rule of Procedure 6.6, when a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice is based.

Section 48(1)(a) of the Act states that 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 the rental unit was rented or provided to the tenant for the term of their employment.

The landlord testified that they served the tenant the One Month Notice because the unit was provided while the tenant was an employee, and that the tenant's term of employment has ended.

The tenant testified that at the beginning of her employment she was living in a unit as an occupant, was not named on that tenancy agreement, and later moved into a different unit, unrelated to her employment. The tenant's evidence includes a copy of the employment agreement which names a unit that is not the subject unit.

Based on the preceding, and on a balance of probabilities, I find the landlord is not entitled to an order of possession because the landlord has failed to prove that the subject unit was rented or provided to the tenant for the term of their employment, pursuant to section 48 of the Act.

Therefore, the One Month Notice is cancelled.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the tenant is successful in their application, I order the landlord to pay the \$100.00 filing fee the tenant paid to apply for dispute resolution.

Pursuant to section 72 of the Act, the tenant is authorized to make a one-time deduction of \$100.00 from a future rent payment in satisfaction of the above-noted award.

Conclusion

The tenant's application for an order to cancel a One Month Notice to End Tenancy for Cause is granted. This tenancy will continue until it is ended in accordance with the Act.

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: May 04, 2023

Residential Tenancy Branch