



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNE, MNDCT, RR, PSF / CNR, MNDCT, RR, PSF, RPP, OLC / OPR, MNRL, FFL

Introduction

This hearing dealt with three applications pursuant to the *Residential Tenancy Act* (the “**Act**”). The landlord’s application for:

- an order of possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent in the amount of \$3,800 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

And the tenants’ applications for:

- the cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”) pursuant to section 46;
- the cancellation of the One Month Notice to End Tenancy for End of Employment (the “One Month’s Notice”) pursuant to section 47;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order that the landlord provide services or facilities required by law pursuant to section 65;
- an order that the landlord return the tenants’ personal property pursuant to section 65; and
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$5,000 pursuant to section 67.

This matter initially came to a hearing before another arbitrator on October 12, 2022. However, due to unexpected circumstances, that arbitrator was not able to render a decision following the hearing. Subsequently, the parties were contacted by the RTB and it was determined that the hearing had to be reconvened and heard by a different arbitrator.

Tenant SG attended this hearing. The landlords were represented at the hearing by counsel and three agents.

Service of Documents

The parties agreed that the landlord served the tenants with its notice of dispute resolution proceeding package and supporting documentary evidence. SG testified, and the landlord agreed, that he served the notice of dispute resolution proceeding packages for the tenants' application on the landlord. However, SG testified he emailed landlord's agent JD the supporting documentary evidence. JD testified that she did not receive any such email. The parties agreed that the landlord had not previously agreed that it could be served by email.

Section 88 of the Act sets out how documents may be served. It does not permit service by email without written confirmation from the recipient. As such, and as JD testified, she did not receive the email, I exclude the tenants' documents from evidence. SG was permitted to give verbal testimony in support of his application.

Preliminary Issue – Withdrawal

At the outset of the hearing, landlord's counsel stated that the landlord would like to withdraw its application for an order of possession based on the 10 Day Notice. As such, I will not adjudicate this issue or the tenants' application to dispute the 10 Day Notice. I note that, should the landlord reapply for an order of possession based on the 10 Day Notice, I find that the tenants should be considered to have disputed the 10 Day Notice as of August 30, 2023, the date they filed the dispute with the Residential Tenancy Branch (the RTB).

Preliminary Issues – Severing

RTB Rule of Procedure 2.3 requires that claims made in an application be related to each other, and that an arbitrator may use their discretion to dismiss unrelated claims. The most urgent issue in these applications is whether the tenancy may continue. Most of the relief sought by the tenants does not relate to the validity of the One Month Notice. As such, and as the hearing as 65 minutes dealing solely with the validity of the One Month Notice, I find it appropriate dismiss all parts of the tenants' applications and all remaining parts of the landlord's application with leave to reapply.

The balance of this decision will address the issue as to whether the tenants are entitled to an order cancelling the One Month Notice.

Issues to be Decided

Are the tenants entitled to an order cancelling the One Month Notice?

If not, is the landlord entitled to an order of possession?

Background and Evidence

While I have considered the 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.

On April 14, 2023, the parties entered into an employment agreement starting April 17. The tenants were hired as a "Resident Manager Couple" and would be the resident managers for a multi-unit apartment building (the building) that the rental unit is located in. As a term of this employment, the landlord would provide the tenants with the rental unit. It stated:

You will be provided with a one bedroom apartment currently valued at \$1900/mo or \$22,800/annum. The rental value is subject to annual rent increases. This is considered to be a taxable benefit.

[...]

You are required to live in the unit while you were employed as a resident manager couple.

[...]

The offer of an apartment is conditional on your continued employment. In the event of termination of employment for any reason, you are required to deliver the apartment vacant within one month of your last day of employment.

The parties agree that the tenants moved into the rental unit on May 1 or 2, 2023. SG disputes that the monthly rent was \$1,900. Rather, he argued that it was roughly \$1,050 or \$1,100, as that was the value of the taxable benefit that appeared on his pay stubs. As I have dismissed all parts of the application except for the issue of the validity of the One Month Notice, it is not necessary for me to determine what the actual amount of monthly rent is. I list the dispute between the parties here for the sake of completeness.

The parties agree that on June 27, 2023, the landlord delivered a letter to the tenants stating that, effective immediately, their employment was terminated. This letter stated that the tenants were required to provide the landlord with vacant possession of the apartment by July 31. It indicated that the tenants would not be charged rent during the intervening time.

That same day, the landlord served the tenants with a copy of the One Month Notice. It specified an effective date of July 31, 2023. It listed as the reason for ending the tenancy as:

Tenant's rental unit is part of the tenant's employment as a caretaker, manager or superintendent of the property, the tenants employment has ended and the

landlord intends to rent or provide the rental unit to a new caretaker, manager or superintendent.

The landlord stated that on June 28, it offered a different individual (DC) the position of property manager. It submitted an offer letter to this effect, which indicated that a one bedroom apartment would be provided to DC on the same terms as it was provided to the tenants.

The tenants did not vacate the rental unit by July 31, 2022, or at all. As a result, the landlord is paying for this new manager to live off-site, and the occupants of the building are deprived of having an on-site manager.

SG stated that when the tenants' employment commenced, there was another unit in the building occupied by a property manager, and this property manager has since moved out of the building. He argued that DC could be moved into that rental unit as opposed to the one he currently occupies. He indicated that that unit is currently under renovation and not capable of being occupied.

SG also testified that the former property manager was allowed to stay in the rental unit longer than one month after his employment ended. He did not specify how long that period was, but SG stated that he wanted the "same grace period".

The landlord's counsel argued that any arrangements reached between the landlord and past employees has no bearing on the tenants' circumstances. He did not comment on whether or not the alternate property manager unit was under renovations but he did reiterate that DC was not able to move into the building until the tenants vacated the rental unit.

Analysis

The basic facts of this case are not disputed. The tenant started working for the landlord on April 17, 2022 and were terminated on June 27, 2022. The rental unit was provided as a term of the tenants' employment as property manager of the building. The landlord hired DC to be its new property manager on June 28, and a term of his employment was that he is to be provided a rental unit in the building. DC has not moved into the building, as the tenants have not vacated the rental unit.

Section 48 of the Act allows a landlord to end an employee's tenancy, if that tenant is employed as a manager of a residential property and if:

- (a) the rental unit was rented or provided to the tenant for the term of the tenant's 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.

Based on the aforementioned facts, the landlord has proven that all three of these elements are true. I accept that the landlord intends to move DC into the rental unit once the tenants vacate, and that it intends to do so in good faith. I see little reason why the landlord would not simply move DC into another rental unit, if it were available, rather than pay for him to reside elsewhere and deprive the building's other occupants of an on-site manager.

As such, I find the One Month Notice was issued for a valid reason. I have reviewed it and find that it complies with the section 52 form and content requirements.

Accordingly, per section 55 of the act, the landlord is entitled to an order of possession.

At the hearing, landlord's counsel indicated that the landlord wanted the order of possession to be effective "as soon as possible". SG stated that he would want at least "a couple weeks" to arrange his affairs and vacate the rental unit.

Given that the month is almost at an end and that most tenancies become available on the first day of the month, I find it appropriate to make the order of possession effective on November 30, 2023 at 1:00 pm.

Conclusion

I dismiss the tenants' application to cancel the One Month Notice without leave to reapply.

Per section 55 of the Act, I order that the tenants deliver vacant possession of the rental unit to the landlord by November 30, 2023 at 1:00 pm.

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: November 21, 2023

Residential Tenancy Branch