



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNE

Introduction

This hearing dealt with a tenant's application to cancel a 1 Month Notice to End Tenancy for End of Employment. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

The landlord stated that evidence had been served upon the Branch in support of their position but that the evidence had not been served upon the tenants. I had not received the landlord's evidence and since it had not been served upon the tenants it would have been excluded from consideration. Therefore, this hearing proceeded based upon verbal testimony only.

Issue(s) to be Decided

Has the landlord established that the tenancy should end for the reason indicated on the 1 Month Notice to End Tenancy?

Background and Evidence

Pursuant to a verbal agreement, the tenants moved into the subject unit in December 2014 in order to become the acting managers of the subject property. While the tenants were acting managers they were not required to pay rent for their unit.

In January 2015 another tenant, DH, moved into a unit on the subject property and paid rent for January and February 2015. At the end of February 2015 the landlord reached an agreement with DH and FG to become the new acting managers.

The tenants claim they learned of their termination when they attempted to collect rent from other tenants on the property on March 1, 2015. The landlord claimed that he had verbally informed the tenants of their termination.

On March 19, 2015 DH served the tenants with a *1 Month Notice to End Tenancy for End of Employment* (the Notice). The Notice has a stated effective date of April 30, 2015 and indicates the reason for ending the tenancy is because "*Tenant's rental unit is part of an employment arrangement that has ended and the unit is needed for a new employee*".

The tenants submitted that they approached the landlord about the Notice to which the landlord stated they could continue to live in the rental unit if they paid rent; however, the landlord refuses to sign the required documents for Income Assistance so that the tenants can collect or have rent paid to the landlord. Alternatively, they need a written tenancy agreement in order for rent to be paid by Income Assistance; however, the landlord did not provide one to them.

The landlord stated that the agreed upon rent for the subject unit was \$650.00 per month. The tenants stated that rent was set at \$600.00. FG testified that she had served the tenants with a 10 day Notice to End Tenancy for Unpaid Rent on April 3, 2015 indicating the tenants failed to pay rent of \$600.00 for the month of April 2015. The tenants denied receiving a 10 Day Notice.

The landlord explained that nothing was put in writing as their stint as acting managers was probationary and they failed to perform the job satisfactorily. FG acknowledged that the tenants asked to have Income Assistance documents signed but that the landlord instructed her not to sign the documents for the tenants. FG also explained that she contacted Income Assistance and learned that the tenants had failed to notify Income Assistance that they had moved out of their former residence yet rent was still being paid to the landlord for that residence on behalf of the tenants. Further, since an eviction notice had been served upon the tenants, Income Assistance informed FG that rent would not be paid for a tenancy about to end.

I heard from the parties that prior to the tenants moving into the subject unit the tenants were renting another unit from the landlord at a different property. Income Assistance was sending rent money directly to the landlord for the former rental unit even after the tenants left that residence as neither the landlord nor the tenants advised Income Assistance that the previous tenancy had ended. I heard undisputed testimony that for the months of December 2014, January 2015 and February 2015 the landlord cashed the rent cheques received from Income Assistance for the former rental unit and gave

the rent money to the tenants in cash. I heard that this arrangement came to an end when Income Assistance stopped sending the landlord rent cheques for the tenants upon receiving documentation indicating another party had rented the tenants' former residence.

The landlord confirmed during the hearing that if the tenants had paid rent for the subject unit and did not engage in undesirable conduct they could have continued to reside in the unit.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, based on a balance of probabilities, that the tenancy should end for the reason(s) indicated on the Notice.

The Notice given in this case is provided for under section 48 of the Act. Where a tenant is employed as a caretaker or manager of a property of which the rental unit is a part, section 48(1) applies and the tenancy may end where all three of the following criteria are met:

- (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 this case before me, the landlord did not establish that the rental unit occupied by the tenants is to be provided to the new manager. I make this finding based upon the fact that the new managers currently occupy another unit on the property and neither the landlord, nor the new managers, indicated that the tenants' unit was required for their use. Furthermore, the landlord acknowledged that the tenants could have continued to occupy their unit if rent was paid and they did not engage in undesirable conduct.

In light of the above, I find this dispute actually revolves around unpaid rent and possibly cause but is not a case where the unit is required for the new managers. As such, I find that part © of section 48(1) has not been proven and I cancel the 1 Month Notice issued on March 19, 2015.

It is important to note that I have made no finding as to the amount of rent payable by the tenants for this unit and the matter of unpaid rent shall be an issue for the parties to resolve on their own, in a manner that complies with the Act, or by way of another Application for Dispute Resolution.

Conclusion

The 1 Month Notice dated March 19, 2015 has been cancelled and the tenancy remains in effect until such time it is legally ended.

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 05, 2015

Residential Tenancy Branch

