



DECISION

Dispute Codes CNE OPT FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant on May 7, 2015 seeking to cancel a 1 Month Notice to end tenancy issued for end of employment, to obtain an Order of Possession for the Tenant, and recover the cost of the filing fee from the Landlord for this application.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

The hearing was conducted via teleconference and was attended by an agent for the Landlord and the Tenant, who each provided affirmed testimony. It was undisputed that the Landlord is an organization or Club that is run by a Board. The Tenant filed her application for Dispute Resolution listing the Club and the current president of the Board as respondents to this dispute. The Tenant questioned why the president was not in attendance at the hearing.

The Board secretary attended this hearing and testified that she was in attendance as Agent for the Landlord and that she was the Tenant's supervisor during the Tenant's employment with the Landlord and that she had full authority to handle this matter.

Section 1 of the Act defines a landlord in relation to a rental unit, to include the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord permits occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties under this Act, the tenancy agreement or a service agreement.

Based on the above, I accepted the Agent's submission that as Board secretary she had full authority to act on behalf of the respondent Landlord in this matter. Furthermore, I concluded that the Agent and any other Board member meets the definition of landlord, as listed above. Therefore, for the remainder of this decision, the Board secretary will be referred to as Landlord and terms or references to the Landlords importing the singular shall include the plural and vice versa, except where the context indicates otherwise.

The Tenant confirmed receipt of evidence served by the Landlord; however, the Landlord submitted that she had only received the evidence that was served with the Tenant's application. The Tenant testified that she had served the President and the

Club with copies of her evidence via registered mail on June 8, 2015. Canada Post tracking information was submitted in the Tenant's oral testimony. Based on the submissions of the Tenant I accept that the Landlords were served copies of the Tenant's evidence in accordance with the Act. Accordingly, I considered all documentary evidence before me and all oral submissions.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. Following is a summary of the submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the 1 Month Notice to end tenancy issued April 29, 2015 be upheld or cancelled?
2. Is the Tenant entitled to an Order of Possession for the rental unit?
3. If upheld, did the Landlord appear at the hearing and make an oral request for an Order of Possession?

Background and Evidence

The Tenant testified that she has occupied the rental unit since sometime in January 2012 after signing a one page contract to be the property caretaker. The Tenant stated that she no longer has a copy of that contract. She said she remembers the terms of her contract included that she was allowed to live in the rental unit in exchange for her completing 50 hours of work each month. No rent and no deposits were required to be paid as long as she completed her 50 hours of labour each month.

The Tenant submitted that her caretaker agreement provided that she could give 30 days' notice to the Landlord if she wanted to end her agreement and the Landlord could give her 30 days' notice to end the agreement if she did not complete her 50 hours of work.

The Landlord testified that the Tenant began occupying the rental property in January 2013 and not 2012. She asserted that the Tenant had entered into a caretaker agreement with the person who was acting president at that time and the agreement would have been the same agreement as the example she provided in evidence. The Landlord submitted that that acting president was no longer part of the Landlord's Board and when he left he took all of his papers with him. Also, they had experienced water damage in the Landlord's office which caused a lot of paperwork to be destroyed. As a result, the Landlord said they do not have a signed copy of the Tenant's caretaker agreement.

The sample agreement provided in the Landlord's evidence was three pages in length. The second paragraph on page one of the agreements states as follows:

This Agreement will be for an initial probationary term of six months from the date of signing. Subject to the satisfactory performance of the Caretaker, this Agreement will be extended on a year by year basis by the parties. This Agreement may be terminated by either party on receipt of 30 days notice to the other party.

[Reproduced as written]

The Landlord testified that on January 28, 2015 the President personally served the Tenant with written notice that her services as caretaker were no longer required and she was required to vacate the property as of February 28, 2015. A copy of that letter was submitted in their evidence. They attended a previous dispute resolution hearing and determined that they had not issued the Tenant a proper eviction notice.

On April 29, 2015 the Landlord personally served the Tenant a 1 Month Notice to end tenancy which was issued pursuant to Section 48(1) of the Act for the reason that the Tenant's rental unit/site is part of an employment arrangement that has ended and the unit/site is needed for a new employee. The Landlord stated that they are requesting the Notice be upheld and the Tenant be required to move out.

The Tenant confirmed that the President served her the letter on January 28, 2015, ending her employment as caretaker. She also confirmed being personally served a copy of the 1 Month Notice on April 29, 2015 as submitted in her evidence. She argued that she has done more than her job and it was not fair to end her employment for no reason at all. She asserted that it was simply unfair to decide to evict her and noted that she continued to work on the property even after she was told she was no longer caretaker.

In closing the Landlord submitted that they have attempted to work with the Tenant over the past 5 months. They have noticed that the majority of the Tenants possessions are gone and they just need her to completely move out.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

The undisputed evidence was that the Tenant entered into an agreement to be caretaker of the property and in exchange for 50 hours of caretaking work the Tenant would be allowed to occupy the rental property without having to pay money for rent or deposits. In addition, both parties agreed that the contract could be cancelled by the Tenant with 30 days' notice. The Tenant argued that the Landlord could only end the contract with 30 days' notice if she did not complete her 50 hours of work.

The Landlord argued that the agreement that they entered into was just like the sample one provided in her evidence which states "*This agreement may be terminated by either party on receipt of 30 days notice to the other party [sic]*".

The *Residential Tenancy Act* defines a “**tenancy agreement**” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia. Common law has established that oral contracts and/or agreements are enforceable.

Notwithstanding the Tenant’s argument that the Landlord could not end the contract unless she failed to complete her 50 hours of work I conclude that the parties entered into a caretaker agreement whereby the Tenant would occupy the rental property in exchange for 50 hours per month work and the contract provided both the Tenant and the Landlord equal opportunity to end the contract with 30 days’ notice to the other party, regardless of the work. In absence of a written contract to prove the contrary, I conclude that the foregoing oral terms of the agreement are recognized and enforceable under the *Residential Tenancy Act*, pursuant to section 91 of the Act.

Upon review of the 1 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of section 52 of the Act listing an effective date of May 31, 2015. I further find that the Notice was served upon the Tenant in a manner that complies with section 89 of the Act.

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice. The burden of proof is based on the balance of probabilities, meaning the events as described by one party are more likely than not.

When considering a 1 Month Notice to End Tenancy for end of employment I must consider section 48 of the Act which states:

- (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.*

The undisputed evidence was that on January 28, 2015 the Tenant was personally served notice that her services as caretaker were no longer required, ending her employment with the Landlord. That notice further stated that the Tenant was required to vacate the premises no later than February 28, 2015.

In light of the above, I find the landlord has satisfied me that the rental unit was provided to the Tenant for the term of her employment as caretaker, that the employment has ended, and the Landlord intends to provide the rental unit to a new caretaker. Therefore, I uphold the Notice to End Tenancy issued April 29, 2015 and I dismiss the Tenant's application for cancellation of the Notice. Accordingly, the Tenant is not entitled to an Order of Possession.

With respect to the landlord's oral request to uphold the Notice and to evict the Tenant, I interpret the Landlord's request to be a request for an Order of Possession. Section 55 of the Act provides that an Order of Possession shall be granted to a landlord where:

- The tenant files to cancel a notice to End Tenancy and the application is dismissed; and,
- The landlord orally requests an Order of Possession during the scheduled hearing.

I conclude that the above criteria have been met and I grant the Landlord's request for an Order of Possession.

Conclusion

The Tenant has not been successful with her application. The application is DISMISSED in its entirety, without leave to reapply.

The Landlord has been granted an Order of Possession effective **Two (2) Days after service upon the Tenant**. In the event that the Tenant does not comply with this Order it may be filed with B.C. Supreme Court and enforced as an Order of that 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: June 23, 2015

Residential Tenancy Branch

