Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Mainline Living Property Managment and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNE, FFT**

Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. Cancellation of the Landlord's One Month Notice to End Tenancy For Cause or End of Employment (the "One Month Notice") pursuant to Sections 48 and 62 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Agent, TB, and both Tenants, SC and KJ, attended the hearing at the appointed date and time and provided affirmed testimony. Both parties were each given a full opportunity to be heard, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Tenants confirmed that they served the Landlord with the Notice of Dispute Resolution Proceeding package including all evidence for this hearing by Canada Post registered mail on July 17, 2021 (the "NoDRP package"). The Tenants referred me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. TB confirmed receipt of the NoDRP package on July 21, 2021. I find that the Landlord was served with the documents for this hearing on July 21, 2021, in accordance with Section 89(1)(c) of the Act.

Issues to be Decided

1. Are the Tenants entitled to cancellation of the Landlord's One Month Notice?
2. Are the Tenants entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The tenancy agreement between the Landlord and the Tenants was signed on October 16, 2020, and the occupancy began on December 1, 2020 as a fixed term tenancy ending on November 30, 2021. Rent in the amount of $1,740.00 is payable on the first day of each month. The Tenants testified they paid a security deposit of $500.00 in October 2020. The Tenants also testified that they paid a pet damage deposit of $150.00 at the beginning of the tenancy, then later they were charged $10.00 per month for the pet damage deposit. TB confirmed the Landlord holds $690.00 ($500.00 + $150.00 + 4X$10.00) in trust for this tenancy.

The Landlord served the One Month Notice on June 25, 2021 by posting it to the Tenants' door. The reasons listed in the One Month Notice are the Tenants' rental unit/site is provided by the employer to the employee to occupy during the term of employment and employment has ended. The Tenants confirmed receipt of the One Month Notice.

On August 10, 2020, an employment contract began between the Landlord and KJ, where KJ's title is listed as Assistant Community Director. On August 28, 2020, KJ signed an Employee Addendum Agreement which amended her earlier signed employment contract by adding a new section:

> *Between Mainline Living Property Management Ltd., as employer (the "Company"), and KJ, as employee (hereinafter defined as "you" or the "Employee"), signed and dated August 28, 2020.*
>
> *WHEREAS:*

A. The Company and you entered into a letter of offer and employment agreement dated August 10, 2020 (the "Employment Agreement");

B. The Employee has been offered the opportunity to live in the Rental Community by the Company or its agent; and

C. The Company and the Employee have agreed to amend certain terms and conditions of your employment (including the Employment Agreement) on the terms and conditions set forth herein.

In consideration of the above and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties covenant and agree as follows:

1. The parties are entering into this Addendum to amend and supplement the terms of the Employment Agreement. Except as expressly modified herein, all other terms of the Employment Agreement remain in full force and effect.

2. The following is added as Section 8.1 of the Employment Agreement:

> *"**8.1 Housing Allowance.** During the term of your employment and in the event you enter into a rental agreement (the "Rental Agreement") for a unit in a Rental Community with the Company or the Company's agent, you will be eligible to receive a housing allowance (the "Housing Allowance") from the Company which will commence as of the date of such rental agreement. …*
>
> *Upon termination of your employment, regardless of the reason for or manner of termination, the Housing Allowance will cease on the last day of your employment with the Company and will not be extended by any period of notice or pay in lieu of notice. In the event that the rental unit you are renting pursuant to your employment agreement is required by the Company for another employee, you acknowledge and agree that the Rental Agreement shall terminate concurrently with your employment and you shall vacate the unit pursuant to the Rental Agreement in full compliance with the terms of the Rental Agreement within TEN (10) days of the termination of your employment."* (emphasis added)

In a June 1, 2021 email, KJ handed in her two week notice and ended her employment effective on June 15, 2021. On June 18, 2021, the Regional Property Manager sent an email stating:

> *… Wondering when you would like to conduct your move out inspection as we have you vacating on June 26, 2021 – per your employment agreement and/or addendum signed and dated August 28, 2020. (see attached).*
> *We have your suite occupied following your departure, so it is imperative that we speak. …*

Later, on June 18, 2021, an email was sent by the Director, Residential Communities stating:

> *… Because it is customary for employee's [sic] to vacate their suite when they leave the employ of any Property Management company, I would like to remind you that the suite you occupy at [location] is reserved for employee's [sic]. …*

The Tenants testified that that section of the Employment Addendum where it states the employee shall vacate 10 days after termination is an illegal eviction attempt. The Tenants also testified, quoting from an email sent on June 21, 2021, that:

> *KJ's employment was not subject to living on-site nor was our unit provided to us as part of her employment, your stated reason of needing us to vacate the unit for an incoming employee does not apply to our situation. We initiated our lease and selected our unit as any other individuals would, outside of the parameters of KJ's employment after she had already been working for the company. The lease we have carries different legal standing than an employment contract.*

The Tenants further responded that it was their intention to continue their tenancy with the rental unit, but with the understanding that the housing allowance would cease.

The Landlord testified that upon signing the employment contract, it links to the rental unit. The Landlord further stated that a replacement Assistant Community Director has been hired, and their probation ends December 31, 2021. They want the rental unit vacant to offer to the new person, who, the Landlord is advised, wants to move into the unit.

Analysis

The standard of proof in a dispute resolution hearing 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 on the person making the claim. Where a tenant applies to dispute

a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Section 48 of the Act is the relevant part of the legislation in this application. It states:

> ***Landlord's notice: end of employment with the landlord***
> *48 …*
> *(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.*
> *…*
> *(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.*
> *…*

On June 25, 2021, the Landlord served the One Month Notice on the Tenants due to an employment contract that ended on June 15, 2021. KJ entered into the employment contract with the Landlord on August 10, 2020, then subsequently agreed to an employment addendum on August 28, 2020 which availed a rental unit to her based on her employment with the Landlord. I find that this tenancy occurred due to the employment contract and the rental unit that was provided was because of the employment contract between the Landlord and KJ. I find that the One Month Notice submitted into documentary evidence complies with Section 52 of the Act.

The Tenants applied for dispute resolution on June 25, 2021 which, I find, is within the 10 day time limit set for application for dispute resolution.

The Tenants submitted that KJ's employment was not subject to living on-site; however, this is not material to the matter of whether the rental unit was provided as part of her employment. Certainly, the Tenants did not have to reside in the rental unit provided, although there were perks that came with that. The Employee Addendum Agreement states "in the event you enter into a rental agreement", that KJ would not only be the

recipient of a housing allowance, but also if the employment ended, so would the tenancy. The material point is, as I found above, that the rental unit was provided to the Tenants because of KJ's employment with the Landlord. As that employment has ended, and the Landlord has a replacement Assistant Community Director hired who wants to move into the unit, I find that the Landlord's One Month Notice is upheld and I grant an Order of Possession, pursuant to Section 55 of the Act, to the Landlord which will be effective on November 30, 2021.

As the Tenant's application is dismissed without leave to re-apply, they are not entitled to recovery of the application filing fee.

Conclusion

As the tenancy has ended, the Landlord is granted an Order of Possession, which will be effective at 1:00 p.m. on November 30, 2021. The Order of Possession may be filed in and enforced as an Order of the British Columbia Supreme 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 Act.

Dated: November 12, 2021

Residential Tenancy Branch