



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNE, FFT

Introduction

This hearing dealt with the Tenant's application under the *Residential Tenancy Act* for:

- cancellation of a One Month Notice to End Tenancy for End of Employment dated February 23, 2022 (the "One Month Notice") pursuant to section 48; and
- authorization to recover the filing fee for this application from the Landlords pursuant to section 72.

The Landlords' agent KD attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, and to make submissions.

The Tenant did not attend this hearing. I left the teleconference hearing connection open until 11:10 am in order to enable the Tenant to call into the hearing scheduled to start at 11:00 am. I confirmed that the correct call-in numbers and participant access code had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that KD and I were the only ones who had called into the hearing.

I advised KD that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings. KD confirmed she was not recording this dispute resolution hearing.

KD acknowledged receipt of the Tenant's notice of dispute resolution proceeding package and documentary evidence. The Landlords relied on KD's oral testimony for this hearing.

Preliminary Matter – Jurisdiction

The Tenant indicated that this application was being made under the *Manufactured Home Park Tenancy Act* (the "MHPTA").

During the hearing, KD testified that the rental unit is a trailer located in a park. KD testified that the Landlords own the trailer.

Section 4(a) of the MHPTA states that the MHPTA does not apply to a tenancy agreement under which a manufactured home site and a manufactured home are both rented to the same tenant.

The *Residential Tenancy Act* applies to tenancy agreements, rental units and other residential properties, but does not apply to tenancy agreements to which the MHPTA applies.

Based on KD's testimony, I find that the Tenant is not merely renting a manufactured home site, but is also renting the trailer or manufactured home on the site. Therefore, I conclude that the *Residential Tenancy Act* (the "Act"), not the MHPTA, applies to this tenancy.

Preliminary Matter – Amendment

This application initially listed two tenants, JO and CO. KD's evidence is that the rental unit was rented to the Tenant JO, who was also an employee of the Landlords. KD confirmed that CO had not been employed by the Landlords. The One Month Notice names only the Tenant JO as a tenant.

In addition, the One Month Notice names WP as landlord. KD confirmed that WP is the owner of the business.

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

Based on KD's testimony, I amended the style of cause to remove CO as a tenant and add WP as a landlord. I am satisfied that the circumstances for doing so can be reasonably anticipated.

Preliminary Matter – Tenant’s Non-attendance

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application with or without leave to reapply.

As the Tenant did not attend this hearing by 11:10 am, while the Landlords’ agent KD attended, I directed that this hearing be conducted in the absence of the Tenant.

Issue to be Decided

Are the Landlords entitled to an Order of Possession of the rental unit?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

KD testified that the Tenant worked as a manager for the Landlords, and that the rental unit was provided to the Tenant for the term of her employment. KD stated that the tenancy commenced on or around April 19, 2021. KD confirmed rent is \$1,500.00, due on the first day of each month. KD stated the Tenant did not pay a security deposit.

A copy of the One Month Notice is submitted into evidence. The One Month Notice is dated February 23, 2022 and has an effective date of March 31, 2022. The One Month Notice states that the reason for ending the tenancy is: “Tenant’s rental unit/site is provided by the employer to occupy during the term of employment and employment has ended.”

KD confirmed the One Month Notice was given to the Tenant in person on February 25, 2022. KD explained that the Landlords issued the One Month Notice after the Tenant had quit her job.

KD expressed frustration that the Tenant continues to occupy the rental unit. KD testified that due to the pets the Tenant had kept in the rental unit, the rental unit requires some work before the next manager can move in.

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.

Sections 48(1) and (2) of the Act permits a landlord to end a tenancy for end of employment as follows:

Landlord's notice: end of employment with the landlord

48 (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.

Section 48(4) of the Act requires that the one month notice to end tenancy comply with section 52 of the Act in order to be effective. Section 52 states:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45(1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,

(d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
(e) when given by a landlord, be in the approved form.

I have reviewed a copy of the One Month Notice and find that it complies with the requirements of section 52 in form and content.

I accept KD's undisputed testimony find that a copy of the One Month Notice given to the Tenant JO on February 25, 2022, in accordance with section 88(a) of the Act.

Section 48(5) of the Act permits a tenant to dispute a one month notice to end tenancy for end of employment within 10 days after receiving such notice. Therefore, the Tenant had until March 7, 2022 to dispute the One Month Notice. Records indicate this application was submitted on March 7, 2022. I find the Tenant made this application within the time period required by section 48(5) of the Act.

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.

Based on KD's testimony, I am satisfied that the rental unit was provided to the Tenant for the term of her employment, the Tenant had worked as a manager for the Landlords' business, the Tenant had concluded her employment with the Landlords before the One Month Notice was issued, and the Landlords require the use of the rental unit for another employee. I find the Landlords have established, on a balance of probabilities, the grounds for ending this tenancy under section 48 of the Act.

In addition, section 55(1) of the Act states:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Having found the One Month Notice to comply with the requirements of section 52 and having dismissed the Tenant's application, I find the Landlords are entitled to an Order of Possession pursuant to section 55(1) of the Act.

I grant an Order of Possession to the Landlords effective two (2) days after service of the Order upon the Tenant.

Conclusion

The Tenant's application is dismissed without leave to re-apply.

Pursuant to section 55(1) of the Act, I grant an Order of Possession to the Landlords effective two (2) days after service upon the Tenant. The Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia 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: July 5, 2022

Residential Tenancy Branch