Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BTC LTD. AND INFINITY ENTERPRISES GROUP LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNE, OPE, OLC, LAT, MNDCL-S, FFT, FFL

Introduction

This hearing was convened in response to cross applications.

The Tenants filed an Application for Dispute Resolution in which they applied to cancel a One Month Notice to End Tenancy for Cause, for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act*) and/or the tenancy agreement, for authority to change the locks, and to recover the fee for filing an Application for Dispute Resolution. The Tenants amended this Application for Dispute Resolution to remove the application to cancel a One Month Notice to End Tenancy for Cause and to include an application to cancel a One Month Notice to End Tenancy for End of Employment.

The Tenants' Application for Dispute Resolution identifies Legal Counsel for the Landlord and the company with the initials "BL" as the Respondent.

At the hearing the male Tenant clarified that the application for an Order requiring the Landlord to comply with the *Act* and/or tenancy agreement is directly related to the application to cancel this One Month Notice to End Tenancy for End of Employment.

At the hearing the male Tenant withdrew the application for authority to change the locks, as that issue has reportedly been resolved.

The Landlord filed an Application for Dispute Resolution in which they applied for an Order of Possession on the basis of a One Month Notice to End Tenancy for End of Employment, for a monetary Order for money owed or compensation for damage or loss, to retain the security deposit, and to recover the fee for filing an Application for

Dispute Resolution. The Landlord amended this Application for Dispute Resolution to include a claim of $9,600.00 in unpaid rent. The Landlord amended the Application for Dispute Resolution again to include a claim for unpaid utilities.

The Landlord's Application for Dispute Resolution identifies the company with the initials "BL" and the company with the initials "IEGL" as the Applicant.

The male Tenant stated that on August 25, 2022 the Tenants' Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on August 02, 2022 was sent to the Landlord, via registered mail. As Legal Counsel for the Landlord acknowledged receipt of these documents, the evidence was accepted as evidence for these proceedings.

Legal Counsel for the Landlord stated that on September 12, 2022 the Dispute Resolution Package sent to each Tenant, via registered mail. The Tenants acknowledged receipt of these documents.

On August 25, 2022 the Tenants submitted an Amendment to their Application for Dispute Resolution to the Residential Tenancy Branch. The male Tenant stated that this Amendment was served to the Landlord, via registered mail, on August 25, 2022.

Legal Counsel for the Landlord stated that the Landlord was not aware the Tenants' Application for Dispute Resolution had been amended by removing the application to cancel a One Month Notice to End Tenancy for Cause and adding an application to cancel a One Month Notice to End Tenancy for End of Employment. He stated that the Landlord has no issue with the amendment, as the Landlord is aware that the matter relates to a One Month Notice to End Tenancy for End of Employment. The Tenants' amendment is, therefore, accepted.

On September 12, 2022 the Landlord submitted their first Amendment to the Application for Dispute Resolution to the Residential Tenancy Branch. The Agent for the Landlord stated that this Amendment was served to the Tenants, via registered mail, on September 12, 2022. The Tenants acknowledged receiving the Amendment and this amendment is accepted.

On December 19, 2022 the Landlord submitted their second Amendment to the Application for Dispute Resolution to the Residential Tenancy Branch and additional evidence. The Agent for the Landlord stated that these documents were served to the

Tenants, via email, on December 16, 2022. The Tenants acknowledged receiving the second Amendment and this amendment is accepted.

On December 16, 2022 the Tenants submitted evidence to the Residential Tenancy Branch. The male Tenant stated that this evidence was served to the Landlord, via registered mail, on December 16, 2022. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On December 26, 2022 the Landlord submitted evidence to the Residential Tenancy Branch. Legal Counsel for the Landlord stated that this evidence was served to the Tenants, via registered mail, on December 09, 2022. The Tenants acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant, with the exception of legal counsel, affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant, with the exception of legal counsel, affirmed they would not record any portion of these proceedings. Legal Counsel for the Landlord assured me he would not be recording the proceedings.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy for End of Employment, served pursuant to section 48 of the *Residential Tenancy Act (Act)*, be set aside or should the Landlord be granted an Order of Possession?
Is Landlord entitled to compensation for unpaid rent/utilities?
Is the Landlord entitled to retain the Tenant's security deposit?

Background and Evidence

The Landlord and the Tenants agree that:

- The Respondent with the initials "BL" and the Tenants signed a fixed term tenancy agreement, the fixed term of which began on May 01, 2021 and ended on July 31, 2021;

- The tenancy agreement declares that the Tenants must vacate the unit at the end of the fixed term because “Housing will become staff housing”;
- The Tenants agreed to pay rent of $1,600.00 by the first day of each month;
- The Tenant paid a security deposit of $800.00 and a pet damage deposit of $400.00;
- On July 28, 2022 a One Month Notice to End Tenancy was posted on the door of the rental unit, which declared that the unit must be vacated by August 31, 2022;
- The One Month Notice to End Tenancy declares that the tenancy is ending because the tenant’s rental unit is provided by the employer to the employee to occupy during the term of employment and the employment has ended;
- The Tenants are still living in the rental unit;
- There is nothing in the tenancy agreement that stipulates the rental unit is provided to the Tenant with the initials “TT” as a term of his employment;
- “TT” was hired by “IEGL;
- “TT” stopped working for “IEGL” in October of 2021; and
- “IEGL” attempted to sign a new tenancy agreement with the Tenant, but a second agreement was not signed by the parties.

Legal Counsel for the Landlord submits that:

- The Agent for the Landlord is a director the company with the initials “BL”, which is named as the Respondent in the Tenants’ Application for Dispute Resolution and as an Applicant in the Landlord’s Application for Dispute Resolution;
- The Agent for the Landlord also owns the company with the initials “IEGL”, which is named an Applicant in the Landlord’s Application for Dispute Resolution;
- “BL” owns real estate which is used by the Agent for the Landlord’s company;
- “IEGL” acts as a consultant to another company owned by the Agent for the Landlord, which has the initials “CZCC”;
- The Tenants knew, or should have known, that the rental unit was provided to “TT” as a benefit of his employment with “IEGL”, in part, because of the clause in the tenancy agreement that declares the unit must be vacated at the end of the fixed term because “Housing will become staff housing”;
- The Tenants knew, or should have known, that the rental unit was provided to “TT” as a benefit of his employment with “IEGL”, in part, because of the email exchanges included in Tab 3 of the Landlord’s evidence;
- The Tenants knew, or should have known, that the rental unit was provided to “TT” as a benefit of his employment with “IEGL”, in part, because IEGL” paid a housing allowance of $400.00 directly to “BL”;

- The Tenants knew, or should have known, that the rental unit was provided to "TT" as a benefit of his employment because in the employment termination letter at tab 4 declares that the rental unit must be vacated;
- The definition of "landlord" in the *Act* should be interpreted broadly, as "IEGL" was permitting the Tenants to occupy the rental unit on behalf of "BL" and because there is a business relationship between "IEGL", "BL" and "CZCC"; and
- When the Tenants had an issue with their tenancy, they were to contact "CZCC", which would refer the issue to "IEGL".

The Agent for the Landlord stated that:

- The rental unit was offered to the Tenants as it was close to his intended place of employment;
- He manages this rental unit through "IEGL";
- **"**IEGL" pays a housing allowance of $400.00, which is paid directly to "BL";
- The market rental rate for this unit is $2,000.00 per month;
- It was rented to the Tenants at an "employee rate" of $1,600.00;
- The unit is not rented to non-employees and it was offered to the Tenants only because "TT" was to be employed by "IEGL"; and
- When the Tenants moved into the residential complex, one of the other occupants were employed by "IEGL" and the others were all employed by "CZCC";
- He is not certain when "IEGL" began managing rental unit, although he believes it was prior to the start of the tenancy;
- When "TT"'s employment ended he was advised, as an act of generosity, that he could continue living in the rental unit until the end of the winter season.

"TT" stated that:

- When he moved into the rental unit he was "checked in" by "CZCC";
- He was never employed at the intended place of employment, as that restaurant never opened;
- He was employed at a location approximately 4 km away from the rental unit;
- When he moved into the residential complex, none of the other occupants were employed by "IEGL";
- He did not understand that the rental unit was provided to him as a term of the tenancy agreement;
- He thought his employer was simply helping him find accommodation**;**

- He was never told that he would have to move if his employment with “BL” ended;
- The Agent for the Landlord told him that he would not be without a home if his employment ended;
- “IEGL” did not begin managing the rental unit until sometime in November of 2021; and
- He was initially offered a gas allowance of $400.00 but the parties mutually agreed that he would receive a housing allowance of $400.00 instead**.**

The Landlord is seeking compensation for unpaid rent, in the amount of $9,600.00, for the period between August 01, 2022 and January 31, 2023. The parties agree that the Landlord has declined the Tenants’ offer to pay rent for this period. “TT” stated that the Tenants owe rent in the above amount and are willing to pay it.

The Landlord is seeking compensation for unpaid utilities, in the amount of $1,166.74, for the gas and hydro bills submitted in evidence. The parties agree that the Landlord has not attempted to collect these payments prior to filing the Landlord’s Application for Dispute Resolution. “TT” stated that the Tenants owe the above amount for utilities and are willing to pay it.

Analysis

On the basis of the undisputed evidence, I find that “BL” and the Tenants entered into a fixed term tenancy agreement which requires $1,600.00 in rent to be paid by the first day of each month.

Section 97(2)(a.1) of the *Ac*t stipulates that the Lieutenant Governor in Council may make regulations that prescribe the circumstances in which a landlord may include, in a fixed term tenancy, a requirement that the tenant vacates a rental unit at the end of the term.

Section 13.1(2) of the *Residential Tenancy Regulations (Regulations)* stipulates that for the purposes of section 97(2)(a.1) of the *Act*, a circumstance in which a landlord may include in a fixed term tenancy agreement a requirement that the tenant vacate the rental unit at the end of the term is that the landlord is an individual who, or whose close family member, will occupy the rental unit at the end of the term. There is nothing in the legislation that permits a landlord to include a term in the tenancy agreement that

requires a tenant to vacate a rental unit at the end of the fixed term because the landlord wishes to use it for “staff housing”.

Section 6(3)(a) of the *Act* stipulates that a term of a tenancy agreement is not enforceable if the term is inconsistent with this *Act* or the *Regulations*. I find that the term in the tenancy agreement that requires the Tenants to vacate the unit at the end of the fixed term because it will become “staff housing” is not consistent with section 13.1(2) of the *Regulations* and is, therefore, not enforceable. As that term is not enforceable, the Tenants were not required to vacate at the end of the fixed term.

Section 44(3) of the *Act* stipulates that if, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms. I therefore find that this tenancy continued as a month to month tenancy after the fixed term ended on July 31, 2021, under the same terms of the original written tenancy agreement.

Although the parties discussed entering into a new tenancy agreement, the parties never signed a new tenancy agreement and the original tenancy agreement remained in place.

The *Act* defines a “landlord”, in part, as 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.

I find that at some point during this tenancy, “IEGL” became an agent for the Landlord, as that term is defined by the *Act*. In reaching this conclusion I was heavily influenced by the Landlord’s submission that when the Tenants had an issue with their tenancy, they were to contact “CZCC”, which would refer the issue to “IEGL” and that the Agent for the Landlord “managed” the unit for “BL”. I note that the Tenants do not dispute that “IEGL” would address tenancy related issues, although the male Tenant testified that the management role of “IEGL” did not begin until after November of 2021.

Regardless of when “IEGL” undertook a management role in this tenancy, I find that it should be considered an agent for the Landlord as it exercised powers and performs

duties under this *Act*, the tenancy agreement or a service agreement in regard to the tenancy.

Section 48(2) of the *Act* stipulates that 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. I specifically note that section 48(2) of the *Act* does not permit a landlord to end a tenancy of the landlord's employee if the employment has ended and the rental accommodations were provided as an "employment benefit".

On the basis of the undisputed evidence, I find that on July 28, 2022 the Landlord posted a One Month Notice to End Tenancy on the door of the rental unit, which properly informed the Tenants of the Landlord's intent to end the tenancy pursuant to section 48(2) of the *Act*.

On the basis of the undisputed evidence submitted by the Landlord, I find there is a business relationship between "BL", "IEGL" and "CZCC". I find that regardless of their business relationship, they are three separate legal entities. On the basis of the employment contract submitted in evidence, I find that "TT" was an employee of "IEGL" and that he was not an employee of either "BL" or "CZCC".

On the basis of the termination letter submitted in evidence, I find that the employment relationship between "TT and "IEGL" ended on October 29, 2021.

The relevant issue to be determined, in my mind, is whether this rental unit was provided to "TT" to occupy during the term of employment. As the Landlord is the party attempting to end this tenancy pursuant to section 48(2) of the *Act*, the burden of proving this issue rests with the Landlord.

I find that the Landlord has submitted insufficient evidence to conclude that the rental unit was provided to "TT" to occupy during the term of his employment. In reaching this conclusion I was heavily influenced by the absence of any reference to employment in the tenancy agreement. Given the importance of a term that requires a tenant to vacate a rental unit if the tenant's employment with the landlord ends, it is extremely important that this term is recorded in a manner that establishes that both parties understood and agreed to that term. In circumstances such as these where the term is not even mentioned in the tenancy agreement and the employee declares that he was never told that he would have to vacate the unit if his employment ends, I find that the Landlord

has failed to meet the burden of proving that the unit was provided to “TT” to occupy during the term of employment.

The court held in *Derby Holdings Ltd. V. Walcorp Investments Ltd. 1986, 47 Sask R. 70 and Coronet Realty Development Ltd. And Aztec Properties Company Ltd. V. Swift, (1982) 36 A.R. 193,* that where there is ambiguity in the terms of an agreement prepared by a landlord, the contra proferentem rule applies and the agreement must be interpreted in favour of the tenant. I find the contra proferentem rule applies in these circumstances and I cannot conclude that the rental unit was provided to TAT” to occupy during the term of his employment.

In determining this matter, I was also influenced by the absence of any reference to a requirement to vacate the rental unit at the end of “TT”s in his employment contract or in any other legal contract.

There is no dispute that “IEGL” was assisting “TT” to find accommodations in the community where employment was being offered to him. That is acknowledged by both parties and is supported by the emails submitted in evidence. (Landlord’s evidence tab 3) I could find nothing in those email exchanges that would cause me to conclude that accommodations were being provided to “TT” as a term of his employment.

While I accept that the Tenant knew, or should have known, that his employer was helping him locate accommodations in the community, I find that does not establish that the accommodations were provided to “TT” to occupy during the term of his employment. Rather, I find the assistance could easily be interpreted as a mutually beneficial effort to ensure “TT” was able to relocate to the community.

I note in an email from an employee of “CZCC”, dated April 15, 2021, “TT” is asked if he would like a lease of one year term or for a shorter period. In the absence of any reference to the tenancy being tied to the length of his employment, I cannot conclude that “TT” should have understood from the emails that he could only occupy the unit for the term of his tenancy.

On the basis of the undisputed evidence, I find that the parties agreed that “TT”’s housing allowance of $400.00 was paid by the employer directly to “BL”. While I accept that this payment shows “BL” and “IEGL” had a close business relationship it does not, in my view, establish that “TT” could only occupy the unit for the term of his employment.

I find that even if “TT” understood, on the basis of the clause in the tenancy agreement that says the unit must be vacated at the end of the fixed term because “Housing will become staff housing”, that the rental unit was being rented to him because of his employment with “IEGL”, it does not establish that “TT” understood he could only occupy the unit for the term of his employment. Rather the term declares that the Tenants must vacate in 3 months, which in no way establishes that the tenure of his stay is related to the length of his employment.

In considering this matter I have placed no weight on the termination letter at tab 4 of the Landlord’s evidence, in which the Tenants are informed that they must vacate the rental unit because it “is designated for staff accommodation with Infinity Enterprises Group. I find that this is merely an opinion expressed by the employer and it has no legal weight.

In considering this matter I have placed no weight on the testimony that other units in this residential complex are only rented to employees of “IEGL” or CZCC”. This is not relevant to whether this unit was rented to “TT” to occupy for the term of his tenancy.

In considering this matter I have placed no weight on the testimony that the Tenants are paying an “employee rate” of $1,600.00, which is lower than market rent. This is not relevant to whether this unit was rented to “TT” to occupy for the term of his tenancy.

As I have concluded that the Landlord has submitted insufficient evidence to establish that the rental unit was provided to “TT” to occupy during the term of his employment, I find that the Landlord has not established grounds to end this tenancy pursuant to section 48(2) of the *Act*. I therefore grant the Tenants’ application to set aside the One Month Notice to End Tenancy for End of Employment and I dismiss the Landlord’s application for an Order of Possession.

As “TT” agrees that the Tenants owe $9,600.00 in rent for the period between August 01, 2022 and January 31, 2023, I find they must pay this amount to the Landlord.

As “TT” agrees that the Tenants owe $1,166.74 in utilities, I find they must pay this amount to the Landlord.

I find that the Tenants' Application for Dispute Resolution has merit and that they are entitled to recover the fee for filing this Application for Dispute Resolution.

I find that the Landlord has failed to establish the merit of the Landlord's Application for Dispute Resolution and I dismiss the application to recover the fee for filing their Application for Dispute Resolution. In reaching this conclusion I find it reasonable to conclude that the Tenants would have paid the overdue rent and utility bills if the Landlord had been willing to accept that payment.

Conclusion

The application to set aside, or cancel, the One Month Notice to End Tenancy for End of Employment is granted. This tenancy shall continue until it is ended in accordance with the *Act*.

The application for an Order of Possession is dismissed, without leave to reapply.

The Landlord has established a monetary claim, in the amount of $10,766.74**,** which includes $9,600.00 in unpaid rent and $1,166.74 for utilities. The Tenants have established a monetary claim, in the amount of $100.00, in compensation for the fee paid to file this Application for Dispute Resolution. After offsetting the two claims, I find that the Tenants owe the Landlord $10,666.64 and I grant the Landlord a monetary Order for that amount.

In the event that the Tenants do not voluntarily comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Although the Landlord applied to retain the Tenants' security and pet damage deposit, I have not applied the deposits to the debt owed to the Landlord. I have not applied the deposits to the debt owed as I did not ascertain, at the hearing, that the Landlord wished to apply the deposits to the debt even if the tenancy were to continue. As this tenancy is continue, I find it entirely possible that the Landlord will want to retain those deposits as a security against damage.

In the event the Landlord wishes to apply all or part of the security and pet damage to this debt, the Landlord has the right to do so pursuant to section 72(2)(b) of the *Act*.

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: January 08, 2023

Residential Tenancy Branch