



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNE, FFT

Introduction

On December 1, 2022, the Tenant filed an Application for Dispute Resolution under the *Residential Tenancy Act* (“the *Act*”) to cancel a One-Month Notice to End Tenancy for end of employment, (the “Notice”) dated November 30, 2022, and to recover the filing fee for this application. The matter was set for a conference call.

The Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure requires the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

- Should the Notice dated November 30, 2022, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Is the Tenant entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The Notice recorded that the Notice to End tenancy was served to the Tenant by posting it to the front door of the rental unit on November 30, 2022, indicating that the Tenant was required to vacate the rental unit as of December 31, 2022. Both parties provided a copy of the Notice into documentary evidence.

The reason checked off by the Landlord within the Notice is as follows:

- *Tenant's rental unit/suite is provided by the employer to the employee to occupy during the term of employment and employment has ended.*

The Notice informed the Tenant of the right to dispute the Notice within 10 days after receiving it.

The Landlord testified that they were ending the Tenant's tenancy due to the Tenant's employment ending.

The Tenant submitted that their tenancy was never based on employment with the Landlord.

The Landlord was asked to present evidence that this tenancy was included as a term of the Tenant's employment. The Landlord testified that they did not create a written tenancy agreement for this tenancy and that they had no written documents to show that they had an agreement, with this Tenant, for the exchange of a tenancy for employment.

The Landlord testified that the Tenant was a seasonal employee and that they were no longer employed. The Landlord confirmed that the Tenant resided in the rental unit all year but only worked for the Landlord seasonally.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Landlord has indicated on their Notice that they are ending this tenancy as this Tenant is no longer employed by them, section 48 of the *Act* speaks to notice to end tenancy due to end of employment, stating the following:

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.

In this case, the Landlord has claimed that this tenancy was contingent on the Tenant continuing to work, seasonally, for the Landlord. The Tenant has submitted that their tenancy had nothing to do with them working for the Landlord. I have reviewed the testimony in this case, and I find that the parties have offered conflicting verbal testimony regarding the connection of employment to this tenancy. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim, in this case, that would be the Landlord.

I have reviewed the Landlord's documentary evidence, and I find that the evidence submitted by the Landlord does not indicate that the Landlord and Tenant entered into a tenancy agreement for employment purposes. As there is no evidence that this tenancy was contingent on the employment of the Tenant by the Landlord, I find that the Landlord has not provided sufficient evidence over and above their testimony to establish their claim.

For this reason, I find that the Landlord has not proven cause sufficient to terminate the tenancy for the reason given on the Notice they issued. Therefore, I grant the Tenant's application to cancel the Notice dated November 30, 2022, and I find the Notice has no force or effect. This tenancy will continue until legally ended in accordance with the *Act*.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was successful in their application to dispute the Notice, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application. The Tenant is granted permission to take a one-time deduction of \$100.00, from their next month's rent in satisfaction of this award.

Conclusion

The Tenant's application to cancel the Notice dated November 30, 2022, is granted. The tenancy will continue until legally ended in accordance with the *Act*.

I grant the Tenant permission to take a one-time deduction of \$100.00, from their next month's rent.

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: April 13, 2023

Residential Tenancy Branch