



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, O

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for cancellation of multiple 10 Day Notices to End Tenancy for Unpaid Rent pursuant to section 47.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties attended I confirmed that there were no issues with service of any of the 10 Day Notices, the application for dispute resolution, the parties' evidence packages or the amendment to the application.

The landlord had issued three separate 10 Day Notices, the first on December 1st, the second on December 7th and a third on January 4th. The landlord, EA testified that the first 10 Day Notice contained errors and the second 10 Day Notice dated December 7, 2016 (the "10 Day Notice") was issued as a replacement and served personally on the tenant on that date. The tenant acknowledged receipt of both of the 10 Day Notices. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the 10 Day Notice.

The tenant filed her application for dispute resolution on December 9, 2016 in response to the second 10 Day Notice and filed an amendment to the application for dispute resolution on January 6, 2016 in response to a third 10 Day Notice dated January 4, 2017. The landlord confirmed receipt of the tenant's dispute application package including evidence and the amendment. I find that the landlord was duly served with the tenant's application for dispute resolution in accordance with section 89 of the *Act*.

As the parties both confirmed receipt of each other's written evidence materials, I find that these documents were served to one another in accordance with section 88 of the *Act*.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If so should the landlord be issued an Order of Possession for unpaid rent?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of these applications and my findings around each are set out below.

The parties agree on many of the facts. This tenancy commenced sometime in 2012. There is a written tenancy agreement dated August 17, 2012 and signed by both parties. The tenancy agreement provides that monthly rent is \$2,000.00 payable on the first day of each month. No security deposit was paid at the start of the tenancy.

The tenant testified that since the start of the tenancy the landlord, ZB has provided her cash with which she supplements her income and pays the monthly rent. The tenant testified that prior to entering into the tenancy agreement she had informed the landlord that she is unable to pay a monthly rent of \$2,000.00. She testified that as a single parent she is mindful of her expenses. She said that she informed the landlord that the maximum rent she would be able to pay on her budget was \$1,800.00. The tenant said that she was told by ZB that the rent would be subsidized so she need not worry. The tenant said that she was told that while the written tenancy agreement would indicate a \$2,000.00 monthly rent the actual rent would be what she could afford to pay. The tenant testified that she was assured that ZB would provide her with funds to pay the rent for the duration of the tenancy.

The tenant testified that she agreed to this arrangement and signed the written tenancy agreement. The tenant testified that ZB initially provided a lump sum of \$3,600.00 to her sister. The tenant said the sum represented a \$300.00 monthly subsidy for her rent for a year. The tenant testified that she would provide \$1,700.00 from her own funds, combine it with \$300.00 provided by ZB and issue a cheque to the landlord in the amount of \$2,000.00 each month. The tenant testified that ZB would thereafter provide her with cash on a monthly basis which she used to top up her own funds to pay the monthly rent. The tenant testified that the funds were always provided in cash and delivered to herself or her sister. The tenant testified that she would deposit the funds into her personal bank account and issue a cheque for \$2,000.00 to the landlord each

month. The tenant testified that in 2013 ZB increased the amount of cash he would provide her each month to \$500.00. The tenant testified that in 2015 ZB further increased the amount of cash he would provide to \$1,000.00. The tenant testified that in addition to the financial support, ZB was friendly with her and would treat her family to meals and offer complementary tickets to events. The tenant testified that because of the landlord, ZB's assurances and the monthly cash he provided she understood the rent to actually be \$1,700.00, the amount she had informed ZB she could afford. The tenant testified that ZB recently stopped providing her with cash because of a personal conflict between the parties. The tenant testified that she last received cash from ZB in October, 2016.

The tenant testified that she is unable to pay \$2,000.00 without ZB's financial assistance. The tenant testified that for the month of November she issued one cheque dated November 9, 2016 for \$1,300.00 and a second cheque dated November 15, 2016 for \$700.00. The tenant testified that she has given the landlord cheques in the amount of \$1,700.00 for the months of December and January. The tenant testified that she believes the monthly rent to actually be \$1,700.00, the amount that she is able to pay. The tenant said that she understood any cash from ZB was being provided in his capacity as landlord.

The tenant's sister was called as a witness. She testified that she assisted the tenant in searching for a rental property through her community. She testified that she was aware of the tenant's limited means and was conscious of her budget when assisting in the property search. She testified that she understood the tenant was looking to pay a maximum of \$1,800.00. She was present when the tenant entered into the tenancy agreement with the landlord and witnesses ZB assuring the tenant he would subsidize her rent. She testified that she received from ZB \$3,600.00 which she then gave to the tenant. She said that throughout the tenancy ZB would provide cash to the tenant, either directly to her or given to the witness who would then give the cash to the tenant.

The landlord, ZB testified that the monthly rent is \$2,000.00 and any agreement made by him with the tenant regarding subsidizing the rental amount was made in his personal capacity and not in his capacity as landlord. The landlord submitted into written evidence a Rent Ledger showing the amount of \$2,000.00 as the monthly rent for the tenant. ZB testified that while he is a 20% owner of the corporate landlord he has full capacity to enter into agreements and negotiate rent. He testified that he waived the fees for parking and storage for the tenant and did not require the tenant to pay a security deposit when entering into the tenancy agreement. He testified that at \$2,000.00 the tenant is paying the lowest rent in the rental building. He testified that all

cash gifts provided to the tenant or the tenant's family was done in his personal capacity.

He testified that he has been providing financial support to the tenant and her family for a number of years and now wishes to stop this support and redirect his funds elsewhere. He testified that supporting members of the community financially is a part of their culture and expected of him as he is an elder and community leader. He said that he is actively involved in his community, regularly makes donations to charities and other members of the community and the arrangement with the tenant was an extension of his personal charity work.

The landlord, EA testified that he is the building manager and responsible for collecting rent payments. He testified that he understood the rent to be \$2,000.00 a month and the cheques provided by the tenant have been for that amount until recently. He testified that he has no knowledge of any agreement or arrangement made between the tenant and ZB. He testified that the rent cheques collected from the tenant for the months of December and January have been for \$1,700.00 and he issued the 10 Day Notices as the rent was not paid in full.

Analysis

In accordance with subsection 46(4) of the *Act*, the tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving the 10 Day Notice. In this case, the tenant received the corrected 10 Day Notice on December 7, 2016, and filed her application for dispute resolution on December 9, 2016. She received the second 10 Day Notice on January 4, 2017 and filed her amendment to the application for dispute resolution on January 6, 2017. Accordingly, the tenant complied with the five day limit under the *Act*.

Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based. In the present case the landlord testified that the tenant failed to pay the full amount of rent owing of \$2,000.00. The tenant denies that the rent is \$2,000.00 and says that the rent is \$1,700.00 which has been paid in full.

The parties agree on the substantive facts. The tenancy agreement submitted into evidence shows that monthly rent is \$2,000.00 per month. Both parties confirmed that ZB was providing the tenant cash throughout the tenancy which the tenant would use to top up her rent payment to the required \$2,000.00 amount. The issue before me is whether the actions taken by ZB since 2012 comprise a part of the tenancy agreement

effectively reducing the monthly rent from the \$2,000.00 as indicated on the written tenancy agreement.

I found both parties to be forthright and consistent in their respective testimonies. However, based on the totality of the evidence I find the landlord's interpretation of events to be more convincing. The written tenancy agreement provides that the rent is \$2,000.00. I accept ZB's sworn testimony that he is authorized by the corporate landlord to negotiate terms and sign tenancy agreements. I find that if the intention of the landlord was to reduce the rent to a fixed amount it would have been written into the tenancy agreement. I find the fact that other terms, such as the fee for storage and parking, were waived, indicates that the rent too could have been reduced on the agreement if that were the intention. I accept the landlord's evidence that the cash provided by ZB to the tenant were personal gifts from ZB. I find the landlord's explanation to be reasonable and believable. The fact that the ZB provided different amounts of cash to the tenant over the course of the tenancy also supports the interpretation that this was not intended to set a fixed lower rent amount.

I find that the actions of ZB in providing cash to the tenant does not form a part of the tenancy agreement nor does it have the effect of changing the contents of the written tenancy agreement. I find that the monthly rent for this tenancy is \$2,000.00 as provided in the written tenancy agreement signed by the parties.

I accept the landlord's evidence that the rental amount has not been paid in full and that the tenant failed to pay the full rent due within the 5 days of service of the 10 Day Notice. Accordingly, I dismiss the tenant's application and find that the tenancy ended on the effective date of the 10 Day Notice, December 17, 2016.

Section 55(1) of the *Act* reads as follows:

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 an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

As I have dismissed the tenant's application to dispute the 10 Day Notice, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*. As the effective date of the 10 Day Notice has passed, I issue a 2 day Order of Possession.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant(s)**. Should the tenant(s) or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The tenant's application is dismissed without leave to reapply.

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: January 16, 2017

Residential Tenancy Branch