



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 335919 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR DRI FFT MNRT RP

Introduction

This hearing was convened in response to applications by the tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

- a cancellation of a landlord’s 10 Day Notice to End Tenancy for unpaid rent pursuant to section 46 of the *Act*;
- a Monetary Order pursuant to section 67 of the *Act*;
- an order compelling the landlord to perform repairs pursuant to section 33 of the *Act*;
- a dispute of the rent increase pursuant to section 43 of the *Act*; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72 of the *Act*.

T.D. and the landlord attended the hearing. The landlord was represented at the hearing by his lawyer, R.S.Y. (the “landlord”), while T.D. represented herself at the hearing. Both parties were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

T.D. acknowledged receipt of the landlord’s 10 Day Notice for Unpaid rent, while the landlord confirmed receipt of the T.D.’s application for dispute resolution. Both parties confirmed they had received each other’s evidentiary packages.

Issue(s) to be Decided

Can T.D. cancel the landlord’s 10 Day Notice? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

During the hearing, the parties agreed to the following facts related to the property in question. T.D. and S.T., the landlord's son, began living on the property in April 2015. S.T. departed the property in June 2017, leaving T.D. as the sole occupant on the property. No security deposit was collected by the landlord, nor was a tenancy agreement signed between any persons involved with the property. S.T. is the son of landlord K.T. Both parties acknowledged that after S.T. left the premises, attempts were made to formalize a tenancy agreement between T.D. and the landlord in the Fall of 2017 but negotiations between the parties broke down and no agreement was reached.

On March 14, 2018, the landlord served S.T. and T.D. with a 10 Day Notice for Unpaid rent. T.D. acknowledged receiving this notice but disputed that the amount of \$9,000.00 cited on the 10 Day Notice was accurate. T.D. argued that rent was \$2,000.00 per month, and that she had made concerted efforts to pay this amount to the landlord by way of four post-dated cheques sent via Canada Post Registered Mail.

Counsel for the landlord did not dispute that T.D. had mailed four posted cheques to the landlord, but argued that no tenancy agreement existed between the parties and that T.D. occupied the property as a licensee. Counsel said that these cheques were returned to T.D. because the parties had not agreed to the terms of any tenancy, and the landlord did not wish to create a tenancy with T.D. at rent of \$2,000.00 per month.

T.D. argued that a tenancy agreement was in place because she had lived on the property since March 2015 in a common-law relationship with S.T., and that some form of "rent" had been paid to the landlord by her former partner S.T. T.D. said that S.T. paid his father, the landlord, K.T., advanced rent of \$12,000.00. She alleged that this payment represented rent of \$2,000.00 per month, for six months' time. T.D. said it was her understanding that rent of \$2,000.00 was a term of the tenancy agreement between the parties, and she wished to continue the tenancy under these terms. T.D. said she did not pay any utilities for the property, other than water.

The landlord argued that no such tenancy existed and that in addition to a lump sum payment of \$12,000.00, S.T. had made only periodic and infrequent payments which amounted to mortgage helpers. After S.T. left the premises in June of 2017, T.D. remained on the property but made no payments to the landlord during the remainder of that year. In the fall of 2017, T.D. and the landlord negotiated, but were unable to agree on a monthly amount. The landlord requested \$3,000.00 per month, and later \$2,500.00. These amounts exceeded what T.D. wished to pay. The landlord sent an

email to T.D. on December 12, 2017 which said, "The only rental agreement was with S.T., which was a month to month tenancy at \$3,000.00 per month. In this agreement I agreed to credit him \$1,000.00 per month for the rental amount as a reimbursement for appliances and improvements he had done to the property until December 31, 2017." In January 2018, T.D. sent the landlord four cheques for \$2,000.00 for rent, but the landlord returned these cheques because he did not wish to establish a tenancy at that rental rate.

Analysis

Residential Tenancy Policy Guideline #9 states, "A license to occupy is a living arrangement that is not a tenancy. Under a license to occupy, a person, or *licensee* is given permission to use a property but that permission may be revoked at any time...if there is exclusive possession for a term and rent is paid, there is a presumption that a tenancy has been created, unless there are circumstances that suggest otherwise. For example, an owner who allows a family member to occupy the site and pay rent, has not necessarily entered into a tenancy agreement."

Included in the *Guideline* are some factors that may weigh against finding a tenancy. Among the factors cited in the *Guideline* are:

- Payment of a security deposit is not required.
- The owner, or other person allowing occupancy, retains access to, or control over, portions of the site.
- The owner, or other person allowing occupancy, retains the right to enter the site without notice.
- The parties have a family or other personal relationship, and occupancy is given because of generosity rather than business considerations.

After considering the oral testimony of both parties, and reviewing the evidence submitted, I find that T.D. has failed to show that she has a tenancy with the landlord. T.D. presented a significant amount of evidence that indicated a tenancy had possibly previously existed between tenant S.T. and the landlord; however, I find that this tenancy ended when tenant S.T. vacated the property in June 2017. T.D. has continued to occupy the property without paying rent since that time and negotiations between her and the landlord have not resulted in a new tenancy agreement. As such, she is

currently a licensee of the landlord. As is discussed in the *Guideline* above, a licensee's right to occupy the property can be revoked at any time.

I find that no tenancy is in place between the parties because no agreement on payment of rent was ever reached between the parties, and thus no contract was ever formed. There was no "meeting of the minds" as is required for the creation of a contract. T.D. argued that rent should be \$2,000.00 per month because this is the rate which was previously paid by S.T. The landlord disputed that this money was accepted as rent, stating that it was paid as a mortgage helper. Furthermore, there is little evidence that receipts were produced for payment of "rent" or that these payments were made in a consistent manner. Finally, I turn to the emails produced at the hearing as part of the T.D.'s application. These emails between the landlord and T.D. clearly indicate that she was aware that the landlord had no intention to create a tenancy with her for payment of \$2,000.00 per month. In a December 2017 email, the landlord wrote that "rent" paid by his son S.T., had been was \$3,000.00 per month, and that a \$1,000.00 "credit" was given to his son S.T. because of appliances and reimbursements related to the property. The landlord went on to testify that these payments were not made monthly, but were sporadic in nature and he accepted this because of the relationship he had with S.T. This email indicates that the parties had a family relationship and that occupancy was given out of generosity, rather than as a business consideration, and that "rent" was a term loosely used by the landlord as it related to payments collected sporadically from S.T.

T.D. therefore had a licence to occupy the property but that permission could be revoked at any time. T.D.'s application's application disputing the landlord's 10 Day Notice is dismissed.

RTB Rules of Procedure 2.3 states that if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply. In this regard, I find T.D. has applied for a monetary award for losses related to this alleged tenancy, along with a dispute related to a rental increase and for an Order that repairs be made to the rental unit. As T.D.'s main concern related to the 10 Day Notice issued to her and I have found that no tenancy exists between T.D. and the landlord, I am dismissing with leave to reapply, all remaining aspects of T.D.'s application for dispute.

Conclusion

T.D.'s application disputing the 10 Day Notice is dismissed without leave to reapply.

T.D.'s application for a monetary award, for Orders directing the landlord to perform repairs, and disputing a rental increase is dismissed with 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: May 30, 2018

Residential Tenancy Branch