



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PORT ROYAL VILLAGE DEV INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OLC, FFT

Introduction

On February 2, 2020, the Tenant made an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 3, 2020 (“the 10 Day Notice”), and for an order that the Landlord comply with the Act, Regulation, or tenancy agreement.

The matter was set for a conference call hearing. The Tenant and Landlord attended the teleconference hearing. The Landlord was assisted by legal counsel.

At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

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.

Preliminary and Procedural Matters

The Landlord testified that a copy of the Landlord’s documentary evidence was served to the Tenants on April 8, 2020 using email sent to the email address provided by the Tenant.

The Tenant testified that she never received the email from the Landlord.

The Landlord acknowledged that they received the Tenants’ documentary evidence.

Issues to be Decided

- Should the 10 Day Notice dated February 3, 2020, be cancelled?
- Is the Landlord entitled to an order of possession?

Background and Evidence

The parties testified that an employment agreement was entered into starting March 14, 2016.

The Landlord submitted that the parties entered into an employment agreement in February 2016 where the Tenants accepted a residential caretaker position and were paid monetary compensation and provided with a two-bedroom suite and two parking stalls as part of the compensation package.

The Tenant provided a copy of a signed employment agreement which provides:

No rent will be payable as long as the employees are employed by the employer, with the exception of any applicable tax set at \$1000.00 per month. Should the employment of the employees be terminated for any reason, the employees will be come tenants and responsible for paying market rent for the unit based on what other units are currently paying.

The Landlord terminated the employment agreement on January 7, 2020 and reminded the Tenants that they are expected to begin paying rent at the market rate of \$3,450.00 starting February 1, 2020. The Landlord provided a copy of a termination letter dated January 7, 2020.

The Landlord testified that following receipt of the January 7, 2020 letter, the Tenants made no effort to negotiate a market rent.

The Landlord testified that no tenancy agreement oral or written containing terms and conditions of tenancy and specifying an agreed amount of rent was entered into after January 7, 2020.

The Landlords counsel submits that a tenancy was created as a consequence of the employment agreement and the monthly rent at fair market value was clarified in the January 7, 2020 letter. The Landlord submitted that the Tenants are aware of what the fair market rent should be because they were resident caretakers dealing with tenancy related matters.

When the Tenants failed to pay the full rent on February 1, 2020 the Landlord issued the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 3, 2020.

The 10 Day Notice provides that the Tenants have failed to pay rent in the amount of \$3,090.00 which was due on February 1, 2020. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

The Landlord testified that they received payment of \$2,085.00 from the Tenants on February 4, 2020.

The Tenants disputed the 10 Day Notice on February 6, 2020, within the required timeframe.

In response, the Tenants testified that they contacted the residential tenancy branch and spoke to an information officer who informed them that the employment contract does not provide a specific amount of rent.

The Tenants submitted that they were paying \$1,000.00 per month per rent as per their employment contract. The Tenants testified that they paid the Landlord \$2085.00 in February 2020 because it is all they had, and they are confused on the amount of rent that they owe. The Tenants testified that they paid an additional \$1,075.00 to the Landlord in April 2020; however they are not sure if cheque was cashed.

The Tenants provided testimony agreeing with the Landlord that that no tenancy agreement oral or written containing terms and conditions of tenancy and specifying an agreed amount of rent was entered into after January 7, 2020.

In reply, the Landlord submitted that the \$1,000.00 per month is an amount set as a taxable benefit as required by the Canada Revenue Agency. The Tenants did not pay monthly rent when they were employed as caretakers..

Analysis

In contract law the basic components of a contract are:

- Offer;
- Acceptance;
- Consideration; and
- Capacity.

Section 6 of the Act provides that a term of a tenancy agreement is not enforceable if:

- the term is inconsistent with this Act or the regulations,
- the term is unconscionable, or
- the term is not expressed in a manner that clearly communicates the rights and obligations under it.

Section 13(2) of the Act provides that a tenancy agreement must comply with any requirements prescribed in the regulations including standard terms; dates; the amount of rent payable for a specific period; the day of the month on which the rent is due and which services and facilities are included in the rent.

Section 26 of the Act provides that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the Act, the regulations, or the tenancy agreement, unless the Tenant has a right under this Act to deduct all or a portion of the rent.

Based on the evidence before me, the testimony of the Landlords and Tenants, and on a balance of probabilities, I make the following findings:

I find that the parties entered into an employment contract that entitles the parties to enter into a tenancy agreement respecting the rental unit upon termination of employment. The employment contract provides that the Tenants will be responsible for paying market rent. I find that the employment contract does not express the terms and conditions of the tenancy in a manner that clearly communicates the rights and obligations under it. I find that the contract requiring the Tenants to accept responsibility to pay market rent years later for an amount unilaterally determined by the Landlord is unconscionable under the Act. I find that the employment contract is not a tenancy agreement as it does not comply with the requirements of section 13(2) of the Act.

I find that the parties have not reached an agreement on the terms and conditions of a tenancy. The Landlord proposed a monthly rent amount of \$3,450.00; however, the offer was not responded to or accepted by the Tenants. I find that there is no oral or written acceptance of a tenancy agreement respecting the rental unit.

I find that the Landlord is correct that they can propose a tenancy agreement at a fair market rent. I find that the rent amount of \$1,000.00 used for tax benefit purposes was not intended to identify the fair market rent. The Tenants are not required to agree to the proposed rent amount and accept the tenancy; however, they do not have a legal

right to demand or require a lower amount of monthly rent. Based on the Landlord's testimony, it appears the Tenants did not make an effort to negotiate the amount of rent.

While section 26 of the Act requires a Tenant to pay rent due under a tenancy agreement, I find that there is no written or oral tenancy agreement. Therefore, I find that the amount of rent identified in the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 3, 2020 is an amount that was not agreed upon by the Tenants. I find that the 10 Day Notice is not an enforceable Notice. The 10 Day Notice is cancelled.

If the Tenants do not wish to accept the offer of tenancy by entering into a tenancy agreement; the Tenants must vacate the rental unit. The Tenants do not have a legal right under the Act to continue to occupy the rental unit.

The parties should be aware that section 48 of the Act permits a Landlord or employer to end the tenancy of a person employed as a caretaker or manager of the residential property if the employment is ended.

While the Tenants are successful with their application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities; I find that there is no tenancy agreement and they do not have a legal right under the Act to continue to occupy the rental unit.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I decline an order that the Landlord repay the \$100.00 fee that the Tenants paid to make application for dispute resolution.

Conclusion

The Landlord terminated an employment agreement on January 7, 2020 and reminded the Tenants that they are expected to begin paying rent at the market rate of \$3,450.00 starting February 1, 2020.

I find that there was no acceptance of a tenancy agreement made after January 7, 2020 respecting the rental unit. I find that the employment agreement creates a tenancy opportunity but does not create a tenancy agreement.

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 3, 2020 is cancelled.

If the Tenants do not wish to accept the offer of tenancy by entering into a tenancy agreement, the Tenants must vacate the rental unit. The Tenants do not have a legal right under the Act to continue to occupy the rental unit.

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 16, 2020

Residential Tenancy Branch