



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC

Introduction

The tenant applied for this dispute resolution on April 28, 2020 for an order to cancel a '10 Day Notice to End Tenancy for Unpaid Rent or Utilities'. They also applied for an order that the landlord comply with the *Residential Tenancy Act* (the "Act"), the regulations and/or the tenancy agreement. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Act* on June 8, 2020.

The landlord confirmed receipt of the notice of this hearing from the tenant via email, with attachments. The tenants verified that their message to the landlord had the subject line 'RTB package'. I am satisfied this is a common mode of communication between the parties, and by section 71 of the *Act*, find that the landlord was served with information and the tenants' evidence in this matter on April 29, 2020.

In the conference call hearing, I explained the process and offered the parties the opportunity to ask questions. They both had the opportunity to present oral testimony and make submissions during the hearing.

Issue(s) to be Decided

Is the tenant entitled to an order to cancel the 10 Day Notice pursuant to section 46 of the *Act*?

If the tenant is unsuccessful in seeking to cancel the 10 Day Notice, is the landlord entitled to an order of possession pursuant to section 55(4) of the *Act*?

Is the tenant entitled to an order for the landlord to comply with the *Act*, regulations, and/or the tenancy agreement?

Background and Evidence

Both parties in this hearing signed a tenancy agreement for the rental unit on August 10, 2018. This tenancy commenced on August 15, 2018, with the monthly rent amount at \$1,800.00, payable on the 15th of each month. The tenant paid a security deposit amount of \$900.00 on August 10, 2018.

At the start of the hearing the tenants provided that their intention in applying for this hearing is to dispute an order of possession that was issued by an Arbitrator in another hearing. That order was dated March 23, 2020; the landlord served it to the tenants in person and posted it to their garage door on March 27, 2020. A copy of this order is in the tenants' evidence. It states the move out date is 2 days after the service of the order by the landlord.

The tenants presented the timeline of events:

- the landlord issued the order of possession on March 27, 2020;
- they paid rent for April on April 23rd when they met with the landlord;
- the landlord agreed at that time to reduce the amount of rent by 25%, with a reduction in the utility payment;
- a receipt dated April 15, 2020 – yet paid on April 23rd – shows the amount of \$1,250.00 total for rent – this is a 25% reduction from the normal \$1,800.00, with a deduction of \$100.00 for utilities;
- the landlord made an offer of \$4,000.00 cash for the tenants to “voluntarily end tenancy and vacate by June 30th” – this offer was on May 13;
- they declined the offer from the landlord on May 14, 2020 by an email that is in the evidence;
- in the same email they stated they would continue to pay rent at 25% reduction
- they paid rent for May, on May 20, for the same amount of \$1,250.00 at the 25% reduction and \$100.00 utility deduction;
- their receipt dated May 15 shows this payment and indicates “May Rent: Paid in full”.

The tenants' position is essentially that stated in their email to the landlord dated May 14: that the tenancy continues with the reduction in place, “until the state of emergency

is lifted". This agreement they made with the landlord in April is not replaced by the landlord's subsequent offer of \$4,000.00 cash. They stated the tenancy continues this way and with this tenancy is in place the order of possession that the landlord served on March 27, 2020 is not active anymore.

The tenants submitted a document that states the terms of an agreement for 25% reduced in rent "Until the State of Emergency in BC is lifted". It also reads: "Then after will continue as outlined in original Tenancy Agreement in the amount of \$1800.00" The document has spaces for each party to sign; however, this document is not signed by any of the parties.

The landlord's understanding and submission is that the arrangement from April – a 25% reduction in rent and a reduction on utilities – was contingent on the tenants leaving on June 30, 2020. They confirm that they made the offer of \$4,000 – when the tenants declined this offer the prior 25% reduction in rent was rescinded.

The landlord states the April and May rent paid was for 'use and occupancy' only. Upon receiving the reduced amount of rent for May, they "made it clear that rent was short . . . supposed to be \$1,700.00. . ." They maintain they made it clear to the tenants that payments are for 'use and occupancy' only.

The tenant stated they provided a "book" for rental receipts to the landlord. It is not clear whether this was a practice adopted by the tenants over the course of the tenancy. However, there are three receipts on the record, all provided by the tenant:

- the tenants' receipt for rent payment on April 23rd bears the landlord's signature for the final amount of \$1,250.00;
- the tenants' receipt for payment of May rent – stating "Paid in full" – dated May 15, shows payment of \$1,250.00. The words "reduced 25% as agreed until state of emergency is lifted" is crossed out on the receipt, and is not signed by the landlord;
- the landlord's receipt dated May 20, 2020 shows no money amount and says "[The tenants] paid [the landlord] on May 20/2020, for use and occupancy only", and this is written and signed by the landlord.

The tenants stated that upon their meeting in May, the landlord "took my money and crossed my book out and gave his own receipt."

The landlords account of this is that once the tenants declined the cash offer, the situation reverted to use and occupancy only, and the tenants knew that.

The landlord stated that realtors they have retained now are working with the tenants in furtherance of having the unit vacant; however, they are striving to obtain suitable accommodation for the tenants. As of the date of this hearing, the realtors brought an offer of \$5,000.00 and two free months' rent to the tenants. Neither party in the hearing could state a timeline for completion or closing associated with this offer.

Analysis

The *Act* section 1 defines "tenancy agreement" as "an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit. . . and includes a licence to occupy a rental unit".

I shall examine whether an agreement exists between the parties, whether it is still extant, and the nature of the agreement to determine whether it establishes a tenancy between the parties.

The tenants applied for this hearing on April 28, 2020. At that time the issue was that of cancelling the order of possession served by the landlord on March 27, 2020. There is no grounds under the *Act* for the tenant to apply for a cancellation of such an order – this is why the tenants have applied to cancel the '10 Day Notice to End Tenancy for Unpaid Rent or Utilities' issued by the landlord on January 17, 2020 for unpaid rent. That is the subject of a prior Arbitration; therefore, the matter is not for my consideration in this review. The concept of *res judicata* applies here: the matter has been previously decided and can not be pursued by the same party for the same resolution. I am not rehearing the merits of the notice to end tenancy previously served by the landlord, and I dismiss this portion of the tenants' application.

Since the time they applied, there have been more developments surrounding the arrangement in place with the landlord. I set the nature of this agreement as the scope of my review of the matter in this hearing. This is my consideration of the second ground the tenants' applied for: whether the landlord need comply with the provisions of the *Act*, the regulations, or the tenancy agreement.

As I see it the tenancy, governed by the tenancy agreement in place between the parties, ended with the order of possession served by the landlord on March 27, 2020.

Following this – and notably after the tenants applied for dispute resolution – there was a provision of rent. I find there was an agreement in place between the tenants and landlord for a new rent amount at that time.

The question then becomes whether the agreement continued through to the next month, governing the next rent payment, and exists as a new agreement going forward. If it does, the landlord is bound by this oral agreement with its express terms in place; if it does not, the tenants must comply with the end terms and the landlord may pursue the enforcement of the order of possession issued on March 23, 2020.

The landlord submits the agreement with a 25% reduction was contingent on the tenants vacating at the end of June 2020. The tenants submit the agreement in place was that this arrangement continues until the end of emergency measures in place for the current health crisis in the province. I find the written agreement submitted by the tenants stating as such, on their part, is a draft that the landlord did not sign – this provides no evidence that the parties reached an agreement.

I find it reasonable that the landlord set an end-limit on this arrangement. It would be unreasonable for the landlord to agree to an indefinite amount of time for a significant reduction in rent and utilities along the way. The landlord previously sought an end to the tenancy, and an arbitrator granted an order of possession in line with that as an enforcement of the *Act*.

In sum, I find that for the initial agreement, the landlord agreed to a reduced amount of rent as a concession to the tenants for the hardship imposed by an immediate move in the time that emergency measures were in place. This is the agreement as it then stood for the month of April only.

Moving forward, the landlord made the subsequent offer of a cash amount, also with the condition that the tenants vacate at the end of June. The tenants made it clear they declined this offer. I find the landlord was free to withdraw the arrangement in place for April at the reduced amount of rent. I find it clear that the landlord replaced the reduced rent arrangement with a cash offer. When the tenants declined, the arrangement then reverted to ‘use and occupancy’ only, with no reduction in rent.

An agreement for the month of April does not mean the tenancy continues with a reduction in place beyond the landlord’s subsequent cash offer. I find by mid-May the landlord made it clear to the tenants that the arrangement had shifted. They did so by crossing out the terms written by the tenant on their prepared May receipt, and not

signing it, and then reinforcing their point by issuing a receipt on May 20, 2020 that clearly states 'use and occupancy only'. By issuing this receipt with the term clearly written therein, I find the landlord has provided they are not agreeing to a continuance of the tenancy. This is the landlord specifically informing the tenant that the money is for use and occupancy only. It was a clear statement of their intent when payment was exchanged.

I find this is also borne out by the conduct of the landlord thereafter. To date, the landlord has made a cash offer that was declined, and as of the time of the hearing the current arrangement in place is that of a realtor assisting the tenants to find housing, also with a substantial cash offer in place. I find the landlord has thus been generous in reducing rent in the month immediately following the issuance of an order of possession, and thereafter making cash offers with guided assistance for the tenants.

To conclude, I find the landlord has complied with the *Act*. For me to rule otherwise would unfairly prejudice the landlord in the situation where they have made their intent clear to the tenants, and nothing in what the landlord has carried out runs counter to the *Act*, the regulations, or the tenancy agreement.

Conclusion

For the reasons set out above, I dismiss the tenants claim as set forth in their Application for Dispute Resolution. The landlord is free to seek an order enforcing the end of tenancy pursuant to the order of possession issued on March 23, 2020.

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: June 12, 2020

Residential Tenancy Branch