



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1059551 Alberta Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on March 24, 2021 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated March 15, 2021 (the "10 Day Notice");

The Tenant, the Tenant's Advocate J.M, and the Landlord's Agents E.H. and C.A. attended the hearing at the appointed date and time. At the beginning of the hearing, the Landlord's Agents confirmed receipt of the Tenant's Application and documentary evidence. As such, I find the above mentioned documents were sufficiently served pursuant to Section 71 of the *Act*. The Landlord's Agents confirmed that the Landlord did not submit any documentary evidence in response to the Application.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling the 10 Day Notice, pursuant to Section 46 of the *Act*?
2. If the Tenant is not successful in cancelling the 10 Day Notice, is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

Background and Evidence

The Tenant stated that he moved into the rental unit on October 1, 2019. The Tenant stated that he had a verbal agreement with the previous owner of the residential property that he would pay rent in the amount of \$400.00 which was due on the first day of each month. The Tenant stated that he would do work for the Landlord around the residential property and was compensated accordingly. The Tenant stated that he was not required to pay a security deposit.

The Landlord's Agents stated that a tenancy does not exist between the parties after the residential property changed ownership on March 1, 2021. The Landlord's agents stated that they notified the Tenant in September 2020 that they would not be continuing the previous arrangement as they did not wish to have the Tenant work at the residential property. The Landlord's Agents stated that they notified the Tenant that the rent would increase to \$850.00 which is the average rent of a one-bedroom rental unit at the residential property. The Landlord's Agents stated that the Tenant currently occupies a two-bedroom unit.

The Landlord's Agents stated that on March 1, 2021 the Tenant only paid rent in the amount of \$400.00 instead of \$850.00. As such, the Landlord's Agents stated that they served the 10 Day Notice to the Tenant by posting it to his door on March 15, 2021. The 10 Day Notice indicates that the Tenant has failed to pay rent in the amount of \$850.00 which was due on March 1, 2021.

The Tenant confirmed receipt of the 10 Day Notice on March 15, 2021. The Tenant stated that he has always paid rent in the amount of \$400.00 and that the Landlord is not permitted to increase his rent to \$850.00.

Analysis

According to the Residential Tenancy Policy Guideline 9; Tenancy agreement is defined in the *Residential Tenancy Act* (RTA) as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Under a tenancy agreement, the tenant has exclusive possession of the site or rental unit for a term, which may be on a monthly or other periodic basis. Unless there are circumstances that suggest otherwise, there is a presumption that a tenancy has been created if:

- the tenant gains exclusive possession of the rental unit or site, subject to the landlord's right to access the site, for a term; and
- the tenant pays a fixed amount for rent.

Section 1 of the Act defines "rent" means money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities

Section 14(1) of the Act states that A tenancy agreement may not be amended to change or remove a standard term.

(2)A tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.

(3)The requirement for agreement under subsection (2) does not apply to any of the following:

- (a)a rent increase in accordance with Part 3 of this Act;
- (b)a withdrawal of, or a restriction on, a service or facility in accordance with [section 27](#) *[terminating or restricting services or facilities]*;
- (c)a term in respect of which a landlord or tenant has obtained an order of the director that the agreement of the other is not required.

During the hearing, the Landlord's Agents questioned if a tenancy exists between the parties. In this case, I accept that the Tenant has been renting the rental unit since October 1, 2019. I accept that the Tenant and the previous owner had a verbal agreement in which the Tenant paid rent in the amount of \$400.00 to the Landlord each month. The Tenant has indicated that he would work for the previous Landlord and be

compensated accordingly. While there may have been an employment relationship between the Tenant and the previous Landlord, I find that a tenancy also exists.

I accept that the residential property sold and that the new Landlord does not wish to continue having the Tenant perform work at the residential property. In this case, I find that the Landlord has provided insufficient evidence to demonstrate what the initial amount of rent that is owed by the Tenant prior to any deductions. I find that the Landlord is not entitled to unilaterally increase the rent to \$850.00 without clear evidence to demonstrate that the Tenant was required to pay this amount should he not be doing work at the residential property.

In light of the above, I accept that the Tenant paid rent to the Landlord in the amount of \$400.00 on March 1, 2021 which was the amount consistently paid by the Tenant to the Landlord throughout the tenancy. Therefore, I find that the 10 Day Notice dated March 15, 2021 is not valid and is subsequently cancelled. I order the tenancy to continue until ended in accordance with the Act.

Conclusion

The Tenant's Application is successful. The 10 Day Notice dated March 15, 2021 is cancelled. The tenancy will continue until ended in accordance with the Act.

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: July 13, 2021

Residential Tenancy Branch