

DECISION

Dispute Codes OPC, FF

Introduction

This hearing was convened by way of conference call to deal with the landlord's application for an Order of Possession for cause, and to recover the filing fee from the tenants for the cost of this application. Only one tenant attended the hearing, on behalf of both tenants.

Both parties gave affirmed evidence and were given the opportunity to cross-examine each other on their evidence.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for cause?

Background and Evidence

This month-to-month tenancy began sometime near the end of the summer of 2005, and the tenants still reside in the unit. Rent is payable on the 1st day of each month, in the amount of \$1,400.00 in addition to \$80.00 per month for hydro. At the outset of the tenancy, the landlord collected a security deposit in the amount of \$740.00.

Another tenant, who is not a party to this dispute, also pays rent for that unit. That tenant also pays \$740.00 per month. The landlord testified that the tenants in this dispute had the responsibility to collect rent from the other tenant, and then to submit all of the rent payments to the landlord by the first of each month. The tenant denies that this is their responsibility.

On February 1, 2010, the landlord served the tenants a 1 Month Notice to End Tenancy for Cause by posting it to the door of the residence, for repeated late rent payments and for breaching a material term of the tenancy agreement. The Notice is dated February

1, 2010 with an expected move-out date of March 4, 2010. Since the notice was posted to the door of the residence, it is deemed to be served 3 days after posting. The landlord testified that she realized that the dates were not in compliance with the *Residential Tenancy Act*, and accepts that the form is “self-correcting” in that the date the tenancy ends, according to the Notice and the *Act*, would be March 31, 2010.

The landlord provided evidence of 2 occasions recently where rent had been paid one day late, and one occasion where the landlord’s daughter collected the rent, but was told by the landlord to return it because it was \$100.00 short. Arrangements were often made between the parties to meet to collect rent in Squamish, but the landlord couldn’t always wait for the tenant to show, and the tenant couldn’t always meet at the pre-arranged time due to work commitments.

The other issue in dispute is parking. The landlord testified that there was a verbal agreement for one spot available to these tenants. They had 3 snowmobiles, and put one or two on a sled deck for the summer months to get them out of the way. The landlord also helped, but testified that for the last 2 summers, they were not put on the deck, but left on the driveway. The tenant argued that first they were allowed to have the snowmobiles, then not allowed anymore. The tenants have solved the parking issue, to a point, by parking one at a neighbour’s residence, one is now on the back of the tenant’s truck, and the other one has been sold. The sled deck is still in the way, according to the landlord’s testimony.

Analysis

The burden of proving that the tenancy should end for repeated late rent payments is not supported by the evidence, and I would dismiss that portion of the landlord’s claim. However, the parties agreed to settle the dispute on the following terms:

- The tenants will vacate the premises on or before April 1, 2010 at 1:00 p.m.
- The landlord will receive an Order of Possession for April 1, 2010 at 1:00 p.m.

Conclusion

I hereby grant an Order of Possession in favour of the landlord for April 1, 2010 at 1:00 p.m. Since the parties settled the dispute and agreed to the Order of Possession, I find that the landlord is not entitled to recovery of the filing fee from the tenants.

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: March 15, 2010.

Dispute Resolution Officer