



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to cancel a notice to end tenancy and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenants to the Landlord, was done in accordance with section 89 of the *Act*, served personally by the male Tenant to the Landlord on November 26, 2010. The Landlord confirmed receipt of the hearing documents.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

1. Is this tenancy governed under the *Residential Tenancy Act*?
2. If so, is the Notice to End Tenancy valid?

Background and Evidence

I heard undisputed testimony that the parties entered into a written lease agreement effective July 1, 2010. Rent was payable on the last day of the previous month in the

amount of \$1,050.00 and a \$575.00 security deposit plus a \$500.00 pet deposit was paid to the Landlord on June 28, 2010.

The Landlord testified he runs his business at a resort in a resort municipality for what he defines as vacation accommodations and therefore this lease does not fall under the jurisdiction of the *Residential Tenancy Act*. He stated that he assumed this was not under the *Residential Tenancy Act* jurisdiction for the following four reasons: 1) this is a resort, 2) he has operated his business for five years collecting rents on a nightly, weekly, and monthly basis, 3) his business is registered in the province and he pays taxes, 4) he owns three private locations which he rents at all times during the year.

The Landlord argued that in their view it was okay for them to end the tenancy because the Tenants violated their rules. He confirmed he issued a notice to end tenancy in an e-mail and argued that this was a fixed term lease that was to end November 30, 2010 and the Tenants were required to move out. He then stated that they had a verbal agreement that the Tenants intended to rent the unit until 2011.

The Tenants testified they did not enter into a vacation rental. They advised that they have both lived in the resort municipality for over three years and both have worked in the community year round for almost four years. They stated the Landlord was aware they were residents of the community. They interpreted their lease to be a fixed term agreement until the end of June 2011. They prepaid their December 2010 rent as demanded by the Landlord and as noted in the lease agreement. They are requesting clarification of the terms of their tenancy agreement and to cancel the notice.

The Tenants advised that several days after serving the Landlord with the notice of hearing they returned home in early December to find the Landlords at the unit and they had changed the lock access code. The police were called and both parties were advised to have no further contact with each other and to work out the details at the hearing. The Tenants still do not have access to the lock code.

The Landlord acknowledged that he has received the three payments to prepay the December 2010 rent and that as of this date all rents are paid in full. He confirmed that he changed the lock access code and the police were called. I ordered the Landlord to provide the Tenants with the access code during the hearing and cautioned the Landlord that he was required to follow the *Residential Tenancy Act*.

The Tenants asked how they were supposed to provide their rent to the Landlord now that the police have advised them not to have contact with him. After a brief discussion it was determined the Tenants would send the Landlord their rent cheques via registered mail.

Analysis

As per the *Residential Tenancy Act* a tenancy agreement is defined 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. If there is exclusive possession for a set term and rent is paid, there is a presumption that a tenancy has been created.

The *Residential Tenancy Policy Guideline #27* states the *Residential Tenancy Act* provides that the Act does not apply to vacation or travel accommodation; however the *Residential Tenancy Act* would apply to summer cottages and winter chalets that are rented for a fixed term and are not rented for vacation purposes.

After careful review of the testimony and evidence, which included among other things a copy of the lease agreement the parties entered into, I make the following findings:

- 1) This tenancy is governed under the *Residential Tenancy Act*; and
- 2) The parties entered into a fixed term tenancy agreement effective July 1, 2010 which is to switch to a month to month tenancy after June 30, 2011; and

- 3) Rent is payable on the last day of the previous month in the amount of \$1,050.00; and
- 4) A rent increase cannot be imposed for at least 12 months as per section 42 of the Act; therefore the rent remains at \$1,050.00 per month.

Upon review of the Notice to End Tenancy e-mail, I find the Notice does not meet the form and content requirements pursuant to section 52 of the Act and the Notice is hereby cancelled and is of no force or effect.

The Tenants have been successful with their application therefore I award recovery of the \$50.00 filing fee.

I have included with my decision a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage the parties to familiarize themselves with their rights and responsibilities as set forth under the *Residential Tenancy Act*.

Conclusion

The Tenants may reduce their next rent payment by the onetime \$50.00 award.

The Landlord(s) is HEREBY ORDERED to comply with the *Residential Tenancy 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: December 15, 2010.

Dispute Resolution Officer