



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, FF, O

Introduction

This hearing was convened by way of conference call in repose to the tenants' application for more time to cancel a Notice to End Tenancy; to cancel the One Month Notice to End Tenancy; and to recover the filing fee from the landlords for the cost of this application.

Service of the hearing documents, by the tenants to the landlord were done in accordance with section 82 of the *Act*, sent via registered mail on January 05, 2012. Mail receipt numbers were provided in the tenants' documentary evidence. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 83(a) of the *Act*.

One of the tenants appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Are the tenants entitled to more time to file an application to cancel the One Month Notice to End Tenancy?

- Are the tenants entitled to cancel the One Month Notice to End Tenancy?

Background and Evidence

The tenant testifies that her mother was the original tenant residing in this trailer for the last 16 years. The tenant states her mother owned the trailer and rented the pad from the landlord for a monthly rent of \$267.00. The tenant testifies that her mother passed away on February 07, 2011 and the ownership of the mobile home passed to the tenant. The tenant testifies that the landlord was informed of this change of ownership and the tenant gave the landlord a cheque for the entire years rent for \$2,700.00. The tenant testifies her nephew has been staying at the trailer since June, 2011 but was not a tenant and does not sublet the trailer. The tenant submits that the trailer must be occupied to prevent pipes freezing and due to maintenance issues as the tenant herself lives in Calgary.

The tenant testifies that her nephew has paid the rent for January, 2012 to the landlord who was always aware that the tenant's nephew was staying in the trailer. The tenant testifies that the landlord has accepted pad rent both from her and her nephew and has therefore entered into an agreement with them to rent the pad.

The tenant testifies she received a One Month Notice to End Tenancy from the landlord dated November 28, 2011. The tenant is unsure when the notice was sent to her but states it was sent by normal mail.

The tenant testifies that the Notice states the tenant has assigned or sublet the rental unit without the landlord's written consent and the Notice has an effective date of December 31, 2011.

Analysis

I have carefully considered all the evidence before me, including the undisputed sworn testimony of the tenant. In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. In the absence of any evidence, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy. As a result, the Notice is cancelled and the tenancy will continue.

As the landlord has provided no evidence to show when the One Month Notice was mailed to the tenants I cannot determine which date the Notice was served.

Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated November 28, 2011 is cancelled and the tenancy will continue. As the tenants has been successful in setting aside the Notice, they are entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 65(1) of the *Act* and may deduct that amount from their next rent payment when it is due and payable to the landlord.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Manufactured Home Park Tenancy Act*.

Dated: January 19, 2012.

Residential Tenancy Branch