



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This was an application by the tenant to cancel a Notice to End Tenancy for cause. The hearing was conducted by conference call. The named tenant and the landlord's representative called in and participated in the hearing.

Issue(s) to be Decided

Should the Notice to End Tenancy be cancelled?

Background and Evidence

The tenancy began in October 2007 when the tenants purchased the manufactured home on a pad in the landlord's manufactured home park. On October 2, 2012 the landlord served the tenants with a one month Notice to End Tenancy for cause by posting it to the door of the tenants' manufactured home. On October 3, 2012 the tenants applied to cancel the Notice. The ground for the Notice to End Tenancy is that the tenants have been repeatedly late paying rent.

The landlord submitted evidence that the tenants have been late in paying rent in 2012 in March, May, July, August, September and October. The landlord's representative said that in past years the tenants have also been repeatedly late in paying rent. At the hearing the tenant did not dispute the landlord's evidence as to late payments. The tenant made proposals intended to induce the landlord to allow the tenancy to continue, such as a proposal to pre-pay pad rent. The landlord testified that she has exhausted her patience in dealing with the tenants. She said that dealing with them has become an administrative burden, because not only are they routinely late, when they do pay they do not even pay the correct amount of rent. The landlord said at the hearing that in view of the approaching winter season, she is prepared to allow the tenants to keep their home on the home site until April 30, 2013, but then she will require them to move, or to have effected a sale to an acceptable purchaser.

Analysis and conclusion

The Manufactured Home Park Tenancy Act provides by section 40 (1) (a) that a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent. Residential Policy Guideline #38 states that: "Three late

payments are the minimum number sufficient to justify a notice under these provisions.” The policy guideline also contains the following comments:

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be “repeatedly” late

A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.

In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.

Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision

The *Act* does not define what constitutes “repeatedly late”. The policy guide says that three late payments are the minimum that would warrant the issuance of a Notice. The guideline also states that exceptional circumstances may be taken into account when determining whether a tenant has been repeatedly late paying rent. I do not find that the tenant’s personal circumstances constitute an exceptional circumstance, as discussed in the Policy guideline. I therefore decline to cancel the Notice to End Tenancy and I dismiss the tenant’s application. The landlord has requested that I issue an order for possession. The landlord has agreed that the order for possession should be effective April 30, 2013. I find that the landlord is entitled to an order for possession effective April 30, 2013 after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

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: November 06, 2012.

Residential Tenancy Branch