



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MT, O

Introduction

This hearing was convened by way of conference call in response to the tenant's application for more time to file an application to cancel a Notice to End Tenancy; to cancel a One Month Notice to End Tenancy for cause; and other issues.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary Issues

The tenant has applied for more time to file an application to cancel a Notice to End Tenancy. The Notice was deemed to have been served upon the tenant on August 13, 2013 and the tenant filed this application on August 16, 2013. As the tenant had 10 days in which to file this application to cancel the Notice then the tenant did file the application in time and does not require additional time. This section of the tenant's application has been withdrawn.

Issue(s) to be Decided

Is the tenant entitled to have the Notice to End Tenancy cancelled?

Background and Evidence

The parties agree that this tenancy started 13 years ago. There was never a written tenancy agreement in place but rather a verbal agreement was made between the tenant and this landlord's father, who was the landlord and owner at that time. Since then the original landlord has passed away and his executors are now landlords of this property. Rent for this unit is \$750.00 per month.

The landlord testifies that there were two tenants who rented this farm land and house. The tenants were responsible to fill in the farm classification forms for BC assessment to ensure the landlord met this criterion so the landlords' property taxes were minimal. The tenants failed to fill in the farm classification forms this year and the landlords sent the tenants a breach letter concerning this. The landlord checked back with BC assessment after the male tenant informed the landlords that he had sent the forms but was told that BC assessment had not received any forms for this farm. The tenants were then served with a One Month Notice to End Tenancy for cause on August 09, 2013. This Notice was posted to the front gate of the property as the tenants had a lama that was loose inside the gate and the Notice could not be posted on the door. The tenant has provided a copy of this Notice in evidence. It does not have an effective date but gives one reason to end the tenancy; that the tenants have breached a material term of the tenancy agreement which was not corrected within a reasonable time after written Notice to do so.

The landlord testifies that it is a condition of the tenancy for the tenants to fill in and send these farm classification forms to BC assessment when required. As the tenants have failed to do so the tenants have breached a material term of the tenancy agreement and must vacate the rental unit and farm.

The tenant disputes the landlords claim. The tenant testifies that at the start of the tenancy she was in a relationship with the other person SP. The tenant testifies that she

rented the home in her name and always paid the rent each month. The other person SP rented the farm land as a separate rental to the house and that person filled in the farm classification forms each year to the tenant's knowledge. The tenant testifies that their relationship ended about five years ago and the tenant continued to reside in the house and SP continued to rent and work the farm land. The tenant testifies that since this Notice was received from the landlords SP has moved his cattle from the farm land.

The tenant disputes that she has received a breach letter from the landlord concerning this matter. The tenant testifies that a few years ago SP received a form to fill in from BC assessment but they have never had a tenancy agreement stating that the house and farm are rented as one property. The tenant refers to her documentary evidence concerning a BC assessment form provided. This form states that there is a house on the land which is rented to a tenant TK. The lesser of the farm is SP the tenants ex partner.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. 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. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

The landlord has testified that the tenants were sent a warning letter concerning the tenants' breach of the agreement to send in the farm classification forms. The tenant disputes ever receiving this letter. The landlord has provided no evidence to show that a letter was sent to the tenant. The tenant also disputes that the rental unit is part of the farm and has testified that this was rented to this tenant TK separately from the farm land which was rented to the tenants ex-partner SP. As there is no written tenancy agreement in place between the original landlord and tenants and the original landlord

has since passed away then there is no evidence that the rental unit was rented as part of the farm land and this becomes one persons word against that of the other. Therefore the landlord has not met the burden of proof that the rental unit is part of the farm land and if the farmland was rented as a separate entity then it is not considered to be residential and would not fall under the *Residential Tenancy Act*.

Consequently, in the absence of any corroborating evidence, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy and as a result, the Notice is cancelled and the tenancy will continue.

Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated, August 09, 2013 is cancelled and the tenancy will continue.

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: September 27, 2013

Residential Tenancy Branch