



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC. OPC, FF

Introduction

This was a hearing with respect to applications by the tenants and by the landlord. The tenants applied to cancel a one month Notice to End Tenancy. The landlord applied for an order for possession. The hearing was conducted by conference call. The landlord and the named tenant called in and participated in the hearing.

Issue(s) to be Decided

Should the Notice to End Tenancy dated March 18, 2014 be cancelled?

Is the landlord entitled to an order for possession pursuant to the Notice to End Tenancy?

Background and Evidence

The rental unit is a mobile home on the landlord's property in Salmo. There is no written tenancy agreement. The tenancy began in August 2012. The tenants arranged to rent the unit from a person who acted on behalf of the landlord. The landlord was living out of the country at the time. The monthly rent is \$700.00. The tenants pay rent by making cash deposits to the landlord's account at a local financial institution.

The landlord testified that he was living in another country and intended to move into the rental property so he gave the tenants a notice by registered mail that he intended to move into the rental unit and required the tenants to move out by April 30, 2014. The Notice that was given by the landlord was not in the proper form; it consisted of a letter to the tenants dated March 6, 2014 requiring them to move out on April 30th. The tenants objected to the Notice. The landlord testified that he no longer intends to move into the rental unit because he has now returned to Canada and is living in other

accommodation. On March 18th he served the tenants with a one month Notice to End Tenancy for cause that required the tenants to move out of the rental property on April 30, 2014. The grounds for the Notice to End Tenancy are that the tenants have been repeatedly late paying rent. The landlord said the rent is due on the first of each month and he provided a copy of his bank statements for the period from April, 2013 to February, 2014. He submitted that the statements provide evidence that the tenants have been repeatedly late paying rent. The landlord's records show that \$700.00 rent deposits were made as follows:

- April 2, 2013
- May 6, 2013
- June 4, 2013
- August 7, 2013
- September 3, 2013
- October (no information provided)
- November 5, 2013 (\$600 paid, second hand fridge purchased for \$100)
- December 3, 2013
- January 2, 2014
- February 3, 2014

The landlord said that he wants the tenant to move out and is not prepared to agree to any extension of the end of tenancy. He said that he may want to sell the rental property and that he does not want to deal with the tenants any longer.

The tenant acknowledged that rent payments have never been made on the first of the month at any time since the tenancy began, but she said there has always been an understanding that the rent may be paid a few days late because her partner's employer may take up to a week after the end of a pay period to issue a paycheque and the tenants are living: "from paycheque to paycheque". The tenant said she is prepared to move out, but other accommodation is hard to find in the region and it may take the tenants several months to find another place to live.

Analysis

The landlord did not enter into a written tenancy agreement providing that rent is to be paid on the first of each month. He has accepted payments made after the first of the month from the beginning of the tenancy in August, 2012. The tenants have accommodated the landlord's absence from the country, making the rent payments by attending at his bank and depositing the rent to directly his account. The landlord first

attempted to end the tenancy without proper notice and without using the required form. When that proved unsuccessful he resorted to a one month Notice to End Tenancy for repeated late payment of rent, but in the absence of a written tenancy agreement specifying the date when rental payments must be made, and given the consistent chronology of rent payments I do not accept that the Notice to End Tenancy for repeated late payment of rent can be sustained. I accept the tenant's testimony that there was a verbal agreement that rent could be paid within a few days of the first of each month because of the unpredictable dates that paycheques are issued to the tenant. The landlord objected to a particularly late payment in August, but apart from that objection, since August 2012 he accepted the payments without complaint until it became an expedient means to end the tenancy. In the specific circumstances of this tenancy and in the absence of a written tenancy agreement, I do not accept that the tenants can be said to have been repeatedly late in paying rent. The Notice to End Tenancy dated March 18, 2014 is cancelled and the tenancy will continue until ended in accordance with the *Residential Tenancy Act*.

Conclusion

The tenants' application to cancel the Notice to End Tenancy is granted. The landlord's application is dismissed without leave to reapply. The tenants are entitled to recover the \$50.00 filing fee for their application. They may deduct the said sum from a future instalment of rent due 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 *Residential Tenancy Act*.

Dated: May 08, 2014

Residential Tenancy Branch

