



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes cnr, cnc, opc

Introduction

This hearing dealt with an application by the tenants for an order to cancel a One Month Notice to End Tenancy for repeated late payment of rent, and other causes. The tenants also requested an order to cancel a 10 day Notice to End Tenancy, although this application was unnecessary, given the landlord's position that such notice had been voided. At the hearing, the Landlord applied for an Order of Possession.

Issue(s) to be decided

1. Is the One Month Notice effective to end the tenancy?
2. Is the landlord entitled to an Order of Possession?

Background and Evidence

The male landlord and the male tenant are brothers. The subject premises were at one time owned by their parents, but are now owned by the landlords. The tenants reside on the premises pursuant to a binding written tenancy agreement that began July 5, 2013. The tenants would like to own the property, and have been granted an Option to Purchase the property from the landlords. However, they are not able to purchase it until they sell other property. The relationship between the parties has soured, and both parties now express dislike for each other, feel no loyalty or familial obligation to each other, and do not trust each other.

The tenancy agreement requires that rent of \$860.00 be paid by the tenants on the 5th day of each month. The agreement further states that the tenants must pay rent on time, and that if the rent is late, the landlords may issue a Notice to End Tenancy to the tenants. At the start of the tenancy the landlords did not enforce this provision of the agreement, and in fact the tenants were soon in arrears. By July 5, 2014 the arrears were at \$4,790.43. That summer, the male tenant promised the landlords that all the arrears would be caught up, and the rental payments would be made on time. However, the rent has continued to be late at times. The male tenant's income does not arrive regularly or consistently, and the female tenant prefers to mail the monthly rent cheques to the landlords, even if that means it may not be received by them by the 5th of the

month. There have also been occasions when the tenants have wrongfully attempted to provide bills to the landlords in lieu of rent payment, even though any such expenses are required to be pre-approved by the landlords.

The landlords' testimony and ledger confirm that in 2014 the tenants' rent was in arrears practically every month. A large \$3,000 payment made August 29 reduced the arrears to \$650.00, and a series of payments in September (on the 8th and 24th) combined with some bill payments (which were eventually accepted by the landlords) effectively brought the tenants into good standing. Rent in October was late (not received until October 6), and January 2015 rent was late (paid on January 12). Only part of February's rent was paid on the 5th, as instead of paying the balance, the tenants tendered bills for improvements in lieu of rent. (Written notice to the tenants requiring pre-approval of any such bills was given on October 1 and February 10). March rent was late (paid March 6) and April rent was late (paid April 8). No rent for September has been paid.

Testimony was also given as to placement by the tenants of locks on numerous gates, including on gates that are in a common area of the farm, effectively denying access to the landlord. The landlords submit this is a breach of a material term of the tenancy agreement, and that the breach was not remedied despite notice being given April 24, 2015, May 5, 2015 and May 15, 2015. The landlords further submit the tenant's denial of access to common areas is an interference with the landlords' right of quiet enjoyment of the common areas. The tenants counter that the landlords are untrustworthy and leave gates open, and the tenants must protect their valuable assets on site.

The landlords issued a 10 day Notice to End Tenancy in April, but consider this Notice to be void, and do not pursue the end of the tenancy on the basis of that Notice. The landlords also issued the One Month Notice to End Tenancy on June 24, 2015, effective to end the tenancy August 5, 2015. That Notice is disputed by the tenants, whereas at the hearing, the landlord applied for an Order of Possession.

Analysis

The tenants' submission that there is an agreement permitting them to pay rent late is not sustainable. That submission is countered by compelling testimony of the landlords. It is also directly contradicted by the written tenancy agreement which was signed by the tenants and the landlords, which requires rental payments to be made on time. The agreement further states (on page 2) that any change or addition to the tenancy agreement must be agreed to in writing, and any change not agreed to in writing is unenforceable. No amendment to the agreement was ever made in writing. I accept that

the landlords had the right to exercise forbearance and accept late rent, and to hold off with enforcement the agreement, but that right was unilaterally one of the landlords. At any time the landlords were entitled to insist on adherence to the terms of the written agreement.

I accept that the landlord's ledger accurately indicates the date rent monies were received. That record makes it clear that rent was often received late over the past year. In 2014, the rent was late in October, September, August, and July, and was in arrears in every month prior. In 2015, the rent was paid late in January, February (as a result of bills being submitted in lieu of rent without pre-approval), March and April. I note that there is no agreement permitting the tenants to set off rent payments with improvement or repair costs, unless same are pre-approved by the landlord, and no pre-approval was sought in February.

By virtue of section 47(1)(b) of the Residential Tenancy Act, a landlord is permitted to end a tenancy on the basis of repeated late payment of rent. It is reasonable to interpret the term "repeated" to mean at least three occasions within a year that the rent is late. The tenants in this case have been late far more frequently. The landlord has therefore established cause to end the tenancy, on the basis that there have been repeated and unauthorized late rental payments. The tenants' application to have the Notice cancelled is therefore dismissed.

As the tenancy will end on this basis, it is not necessary for me to consider the other various causes given in the Notice ending the tenancy. I add however, that I consider the tenants' conduct in denying access to the landlords to common areas was gave cause to end the tenancy.

I must consider the landlords' application for an Order of Possession. The Notice stated that the tenancy would end August 5. Clearly that date has come and gone, and in fact this hearing was not scheduled until September 8. It was in order therefore, for the landlords to accept the rent for August, without prejudice. This had the effect of extending the tenancy to September 4. I note that no rent has been paid for September but I also consider that moving from a farm when there are animals involved can be an arduous and time consuming task. On the other hand, it is clear from the evidence before me that the relationship as between the parties is extremely corrosive, and any delay in ending the tenancy while practical from a farming perspective will further aggravate the relationships as between the parties. I therefore order that the tenancy shall end September 30, 2015.

The tenants' application to cancel the Notice, and for recovery of their filing fee, is dismissed.

Conclusion

Pursuant to Section 55(1)(b) of the Residential Tenancy Act, I issue an Order of Possession effective September 30, 2015. This order must be served upon the tenants. Should the tenants fail to comply with this Order, the landlords may register the Order with the Supreme Court for enforcement.

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 08, 2015

Residential Tenancy Branch

