



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### **Dispute Codes:**

#### **DRI**

### **Introduction**

This hearing was scheduled in response to the tenant's Application, in which the tenant is disputing an additional rent increase given under the Manufactured Home Park Tenancy Act.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

### **Preliminary Matter**

The tenant submitted one piece of evidence which was not served to the landlord. The landlord served the Residential Tenancy Branch late evidence, sent by email, which is not an accepted method of service. The tenant acknowledged the landlord's evidence and I found, based on the tenant's acknowledgement during the hearing that he had reviewed the evidence and was prepared to proceed, that this evidence would be referenced during the hearing.

### **Issue(s) to be Decided**

Has the landlord imposed an additional rent increase?

### **Background and Evidence**

During the hearing the parties agreed upon the following facts:

- The manufactured home had been previously owned by long-term occupants of the park;

- That in 2007 the tenant became one of three co-owners of the home, by way of a signed agreement and that the landlord was not a party to this ownership agreement;
- That in mid-to late 2008 discussion occurred between the previous occupants of the home and the landlord that they would be selling their total interest in the home;
- That the previous occupants gave the landlord written notice terminating their tenancy effective October 30, 2008;
- That by November 2008 the tenant had been given an Application for Tenancy by the landlord;
- That on March 2, 2009 the tenant sent the landlord an email asking what the new rent would be, informing that he had taken ownership of the home effective December 3, 2008 and that he would pay the rent from October to December 2008 that the previous occupants had not yet paid at a rate of \$125.00 per month and that he will then pay "the rest of the amount from Jan to March when I know what the new rent pad is going to be;"
- That the landlord responded on the same day indicating that \$1,450.00 was owed, that monthly rent is \$300.00.

The tenant submits he gained status as a tenant as a result of his co-ownership of the home commencing in 2007 and that the rent increase made from \$125.00 per month to \$300.00 exceeds that allowed under the Act. The landlord stated that until October 30, 2008 the tenancy was with the owners of the home who had been in the park for approximately fifteen years and that any agreement signed between the original home owners and other individuals had no impact on the tenancy relationship.

The parties differ in opinion as to the effective start date of the tenancy. The tenant received an application for tenancy which he stated was completed on November 25, 2009, but the landlord testified that he did not receive that completed application. No evidence was submitted supporting delivery of a completed application to the landlord.

The landlord maintains that when the tenant paid \$1,450.00 in March 2009 the tenant overpaid the landlord by \$250.00 as he was not responsible for unpaid rent owed by the previous occupants. The landlord established this when, in preparation for this hearing, he determined that the tenant had paid rent for November and December 2008, on behalf of the previous home owners. However, the landlord's evidence references a tenancy start date of December 2008, at a pad rental rate of \$300.00. The evidence indicates that the tenant is also entitled to a \$250.00 refund for rent overpayment made for November and December, 2008.

The tenant maintains that he always believed his rent to be \$125.00 and that he paid \$300.00 per month rent from January 2009 to the present as he was unaware of the requirement of the Act, which sets the maximum allowable annual rent increase. The tenant stated he would not have purchased this unit if he had known the rental fee was going to be \$300.00 per month.

During the hearing, in an attempt to settle the matter the landlord offered a site rental rate of \$225.00 per month; the tenant determined that he would be willing to pay \$200.00 a month; therefore, the parties were unable to come to a mutual agreement.

### Analysis

I find that the previous tenancy ended on October 30, 2008 as the result of written notice given to the landlord by the occupants who had been long-term tenants of the park.

I find that the tenant did not have an agreement with the landlord at any time prior to October 30, 2008 as the previous occupants paid the rent to the landlord and were solely responsible to the landlord until their written notice ending the tenancy was effective.

I must decide when the current tenancy began and what the rent was at the time this tenancy commenced. Section 28 of the Act allows a tenant to assign a tenancy agreement for a home site if the tenant obtains prior written consent from the landlord, or is deemed to have that consent. I find that the landlord did accept that the previous occupants were selling their interest in the home, that they were terminating their tenancy and that the new owner would then be accepted as a tenant.

I have considered the email evidence sent between the parties on March 2, 2009 and find that this communication establishes the intent of the tenant to pay rent owed by the previous owner at a rate of \$125.00 per month and the expressed anticipation by the tenant as to what the required site rent payments were to be during his tenancy. I find that this email communication between the tenant and landlord indicates that the tenant understood that once his tenancy was formally established with the landlord his site rental was not going to be the same as it had been for the previous home owners.

The landlord and tenant entered into a verbal tenancy agreement without completing a written agreement setting out the standards terms required by the Act. The landlord did not actively pursue the tenant in order to establish a tenancy start date and the tenant did not pay any rent until March 2009, after having had email communication with the landlord.

In the absence of any evidence, based upon the testimony of both parties and on the balance of probabilities, I find that the tenant did make a rent payment for November and December 2008 in the sum of \$250.00 and that these payments were made on behalf of the previous owners of the home. The previous owners had terminated their tenancy, their manufactured home had remained on the landlord's property and a tenancy had yet to be established with the home's new owner.

I find that, in the absence of a written tenancy agreement, that the tenant did take ownership of the manufactured home effective December 3, 2008 and that his tenancy commenced on January 1, 2009. I find that the monthly site rental due is \$300.00, which is paid on the first day of each month and that, based upon the landlords' offer, the tenant has paid November and December 2009, rent owed on behalf of the previous tenants. I base this decision on the email evidence exchanged between the tenant and landlord; specifically the tenant's own submission that he would pay the October to December rent owed by the previous occupants and that he understood information would be provided on the site rental he must pay. Neither party took steps to ensure clear terms of this tenancy were established and the tenant failed to establish the site rental rates at the time the purchase was made.

Therefore, I find that the tenant is entitled to a one-time rent abatement in the sum of \$250.00 which may be deducted from rent owed. The tenant will continue to pay pad rental in the sum of \$300.00 per month. As this tenancy commenced on January 1, 2009 the earliest a rent increase, in the approved form and amount, may be made, was January 1, 2010.

The tenant's Application disputing an additional rent increase is dismissed without leave to reapply.

### Conclusion

I find that this tenancy commenced effective January 1, 2009 and that site rental is \$300.00 per month due by the first day of each month.

I find that the landlord has not increased the rent in breach of the Act and that the tenant's application disputing an additional rent increase is dismissed without leave to reapply.

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: March 12, 2010.

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Dispute Resolution Officer