

DECISION

Dispute Codes CNR, O

Introduction

This matter dealt with an application by the Tenants to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 8, 2010.

Issues(s) to be Decided

1. Do the Landlords have grounds to end the tenancy?

Background and Evidence

This tenancy started in April 2003. Pad rent is \$175.00 per month payable in advance on the 1st day of each month. On March 8, 2010, the Landlords served the Tenants by registered mail with a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 8, 2010. The Notice alleged that the Tenants failed to pay pad rent and penalties in the total amount of \$6,990.00 that was due on March 2, 2010.

The Landlords' agent said that the Tenants have unpaid rent for 9 months (August 2009 – March 2010) and now also have unpaid rent for April 2010. The Landlords' agent said that the balance of the amount shown on the Notice as unpaid rent (\$5,415.00) is actually for late rent payment fees as set out in the Park Rules. In particular, the Landlord's agent said the Rules provide that a payment made on the 2nd day of the month will result in a charge of \$25.00 and that for each day rent remains unpaid a \$5.00 fee will also be charged. The Landlords' agent said that the Tenants have not paid any of the arrears.

The Tenants admit that they have not paid the rent arrears but claim that they are trying to sell the mobile home to satisfy that debt.

Analysis

Section 39(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or apply for dispute resolution to dispute that rent is owed. If a Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Although the Tenants filed an application to dispute the 10 Day Notice dated March 8, 2010, I find that there are no grounds for their application because they admit that they have rent arrears for the period, August 1, 2009 to March 31, 2010. Furthermore, s. 59(1) of the Act says that the director may not extend the time to pay rent arrears unless it is agreed to by the Landlord. Consequently, the Tenants' application to cancel the Notice is dismissed without leave to reapply and the Notice remains in force and effect.

Section 5 of the Regulations to the Act states that a Landlord may only charge \$25.00 for a late payment fee. Section 5 of the Act states that any attempt to avoid or contract out of the Act or Regulations is of no force and effect. As a result, I find that the Landlords' Rules that purport to charge a late fee of \$5.00 per day in addition to a \$25.00 fee are not recoverable. Consequently, I find that the Landlords are only entitled to unpaid rent of \$1,575.00 and late fees of \$225.00 for the 9 month period claimed on the 10 day Notice (plus any additional rent arrears and late fees that accrue until the tenancy actually ends). However the Landlords will have to make a separate application for a monetary order to recover those amounts.

Conclusion

The Tenants' application is dismissed without leave to reapply and the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 8, 2010 remains in force and effect. 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: April 28, 2010.

Dispute Resolution Officer