

DECISION

Dispute Codes DRI, OPT, RR, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution to obtain an order or possession, to have the landlord not impose an additional rent increase and to allow the tenant to reduce rent for repairs, services or facilities agreed to but not provided.

The hearing was conducted via teleconference and was attended by the tenant and their legal counsel. The landlord did not attend.

The tenant testified that he served the landlord personally with the notice of this hearing. The landlord submitted evidence to the Residential Tenancy Branch on June 7, 2010. Based on the tenant's testimony and the submitted evidence, I find the landlord was sufficiently served with notice of this hearing.

The tenant and his counsel testified they had not received any evidence from the landlord, as such I have not considered the evidence submitted in this decision.

At the hearing it was made clear the tenant has possession of the rental unit but is seeking an order to have the tenancy agreement assigned from the selling tenant to the purchasing tenant and to have the hydro turned on. As a result, the tenant's application is amended to exclude the application for an order of possession and include an application for an order to have the landlord comply with *Manufactured Home Park Tenancy Act (Act)*.

Issues(s) to be Decided

The issues to be decided are whether the tenant is entitled to an order requiring the landlord to assign the tenancy agreement from the selling tenant to the purchasing tenant; to have the landlord turn on hydro to the site; to reduce the rent in compensation for the landlord turning off hydro to the site; and to a monetary order to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to sections 28, 35, 36, 58, and 65 of the *Act*.

Background and Evidence

The tenant provided into evidence the following documents:

- A copy of a letter from the tenant's legal counsel dated May 4, 2010 to the landlord requesting the landlord approve the attached Request for Consent to Assign a Manufactured Home Site Tenancy Agreement;
- A copy of a Request for Consent to Assign a Manufactured Home Site Tenancy Agreement, signed by both the selling tenant and the purchasing tenant with an effective date of May 1, 2010;
- A copy of a letter from the hydro service provider dated June 7, 2010 addressed to the purchase tenant with his account number confirming they have not disconnected the hydro service to this site;
- A copy of a Notice of Rent Increase addressed to the selling tenant dated January 12, 2009 increasing the rent to \$249.00 per month effective April 1, 2009; and
- A copy of a Notice of Rent Increase addressed to the selling tenant dated January 12, 2010 increasing the rent to \$279.00 per month effective April 1, 2010.

The tenant and his counsel testified the possession date for the purchase of the manufactured home was mid April, 2010, the purchase did not require the purchasing tenant to obtain a mortgage and the selling tenant was elderly and unaware that he was required to formally request the assignment of the tenancy agreement prior to the effective date of the purchase.

The purchasing tenant testified the only dealing he has had with the landlord was when he went to try and pay rent for May 2010 the landlord would not accept it and requested that he sign a new tenancy agreement with rent set at \$400.00.

It was after this meeting the purchasing tenant and his legal counsel had the selling tenant complete the Request for Consent to Assign. The purchasing tenant testified the only response he received from the landlord was that his hydro was cut off on May 3, 2010. The landlord did not respond to the request in writing. The tenant testified he is still without power.

Analysis

Section 28 of the *Act* requires a tenant to obtain prior written consent of the landlord to assign an existing tenancy agreement or have the consent deemed to have been obtained in accordance with the regulations.

Section 44 of the regulation requires the tenant to submit the request for consent within sufficient time prior to the effective date of the proposed assignment. From the evidence provided the selling tenant did fail to meet this obligation, however, once the tenant was made aware of the requirement the request was submitted within a few days to the landlord.

Section 47 of the regulation stipulates if the landlord receives a request that does not comply with Section 44 he must do one of the following:

1. Consent to the Request
2. Notify the home owner the request is withheld and on what grounds; or
3. Advise the home owner promptly that only a compliant request will be considered.

Section 45 of the regulation requires the landlord to respond to a request for consent to assign within 10 days and include the grounds for withholding the consent.

I therefore find the landlord's consent is conclusively deemed to have been given and the home owner may assign to the proposed purchaser as the home owner had not received the landlord's response within 10 days in accordance with Section 46 of the regulation.

Therefore, I find the landlord and tenant are not entering into a new tenancy and since the landlord imposed a rent increase on this tenancy effective April 1, 2010 and he cannot now impose an additional rent increase of \$121.00 for this tenancy.

Based on the testimony and documentary evidence provided and in the absence of any testimony from the landlord, I find the landlord has no authority under the Act, regulation or tenancy agreement to cut off the tenant's hydro.

Conclusion

I order the landlord to assign the tenancy agreement to the purchasing tenant and continue the tenancy with the same terms and conditions as the original tenancy agreement.

I further order the landlord to provide hydro to the site immediately. As the restriction of hydro from the site has impacted the tenant's use of the site completely, I find the tenant is entitled to compensation equivalent to the monthly rental amount of \$279.00 for each

month the tenant has been without hydro. I therefore order that the tenant does not need to pay the landlord rent for the months of May and June 2010.

I also order that until such time as the landlord restores the hydro to the site the tenant is not required to pay rent or any portion thereof. In addition, I note the tenant remains at liberty to apply for compensation of any other possible loss resulting from the landlord's restriction of hydro to the site.

I also find the tenant is entitled to recovery of the filing fee for this application and order, in accordance with Section 65, that the tenant may reduce from a future rental payment the amount of \$50.00, once the hydro has been reinstated.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Manufactured Home Park Tenancy Act*.

Dated: June 23, 2010.

Dispute Resolution Officer