

DECISION

Dispute Codes

CNLC

Introduction

This hearing was convened in response to an application by the tenant.

The tenant applies to cancel several Notice to End Tenancy, and for a monetary order for the cost of emergency repairs, money owed for damage or loss, and to obtain an order of possession of the site. The tenant applies to recover filing fee from the landlord.

The tenant also applied for return of a 'security deposit' which is amended as per section 17 of the *Manufactured Home Park Tenancy Act* (the Act) to mean, ***money paid as security for any liability or obligation of the tenant respecting the Manufactured Home Park, other than for rent for the site***, as there is no provision in the Act for a security deposit.

Preliminary matters

The tenant applies for more time to make an application to cancel a Notice to End tenancy. At the outset of the hearing it was determined and clarified that the tenant is a party to previous adjudicated proceedings and decisions related to this tenancy; and that a current Order of Possession remains valid and is the matter of a Supreme Court application for its enforcement. This portion of the tenant's application is **dismissed** without leave to reapply.

The tenant's application to cancel a previously adjudicated Notice to End is *Res Judicata*, - previously determined in the appropriate forum, and the Order was upheld on review. Therefore, this portion of the tenant's application is **dismissed without leave to reapply**.

The tenant's application for compensation for damage or loss related to the outstanding portion of the lease is *Res Judicata*. The tenancy has been Ordered at an end, and as a result, the lease ends with it on the effective date of the Order. Therefore, this portion of the tenant's application is hereby **dismissed without leave to reapply**.

Issues(s) to be Decided

Is the tenant entitled to the cost of emergency repairs?

Is the tenant entitled to the return of *money paid* to the landlord?

Is the tenant entitled to 12 months compensation pursuant to a Notice to End Tenancy for conversion of a manufactured home park?

Background and Evidence

This tenancy has been the subject of previous decisions and review.

The tenant and landlord provided contrasting evidence and testimony respecting the tenant's application for the return of \$2000 paid to the landlord at the outset of the tenancy – improperly categorized as a security deposit.

The tenant provided a hand-written statement / receipt for \$2000 purportedly signed received by a representative of the landlord – having purportedly been given by the occupant of the tenancy, on behalf of the owner of the mobile home. The landlord very strongly denies ever receiving the money or executing their signature on any receipt for same, and has purportedly referred the matter to the Police as a matter of fraud: the landlord asserting the tenant's claim is based on a fraudulent document.

The tenant claims the landlord intentionally damaged the water lines under the mobile home, and the matter has been referred to Police. The tenant provided an invoice for repairs to the mobile home's waterlines, dated September 12, 2009 in the amount of \$481.10, and seeks to recover these costs as emergency repairs. The landlord did not dispute or deny the tenant's claim.

The tenant seeks the quantum of compensation due to the tenant under the Act pursuant to a Section 42 - 12 Month Notice to End Tenancy for conversion of manufactured home park dated September 10, 2009 with an effective date of September 30, 2010 – an amount equal to 12 month's rent payable under the tenancy agreement. The tenant did not dispute the Notice to End; however, the tenant and landlord subsequently agreed the landlord would receive an Order of Possession ending the tenancy earlier than the effective date of the 12 Month Notice to End and that it would end May 31, 2010. The landlord has not yet paid the compensation equal to 12 months rent under the tenancy agreement.

During the hearing, the landlord agreed to inform certain individuals to cease or refrain from disturbing the tenant and /or occupant of the mobile home for the duration of the tenancy.

Analysis

I find the tenant is entitled to their claim for the cost for emergency repairs in the amount of **\$481.10**.

In respect to the tenant's claim for the return of \$2000 being held by the landlord for security, - on the preponderance of the evidence, I make no finding on this matter at this time as I note that if the money is a security for any liability or obligation of the tenant respecting the manufactured home park, that the tenant's responsibilities continue to the end of the tenancy. I find any claim by the tenant in this regard is premature.

Should the landlord not return this deposit at the end of the tenancy and the tenant determines they have a right to its return; the tenant can apply for its return. I therefore **dismiss** this portion of the application **with leave to reapply**.

I find the tenant was served with the 12 month Notice to End with an effective date of September 30, 2010 and I find the notice to be valid. The tenant did not apply for dispute resolution to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ends on the effective date of the notice. In this matter, the parties subsequently mutually agreed to an earlier end date of May 31, 2010. Rent is still payable until the vacate date, and the landlord is still obligated to pay the tenant compensation, *on or before* the effective date of the Notice to End, an amount equal to 12 months rent payable under the tenancy agreement. As a result, I find the tenant's application for the compensation to be premature, and the application is hereby **dismissed**, with leave to reapply should the landlord not satisfy their obligation under the Act.

Conclusion

I Order the tenant may deduct their entitlement in the amount of **\$481.10** from rent / future rent.

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*.