



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes: OPR, MNR, FF

Introduction

This hearing dealt with applications by both the landlord and the tenant pursuant to the *Manufactured Home Park Tenancy Act*. The landlord applied for an order of possession pursuant to section 48 and for a monetary order for unpaid rent and loss of income pursuant to section 60. The tenant applied to dispute the landlord's application and also applied for the recovery of his filing fee pursuant to section 65.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

At the start of the hearing, the landlord informed me that he had gained possession of the dispute rental lot and therefore his application for an order of possession was no longer necessary. Accordingly, this hearing only dealt with the landlord's application for a monetary order for unpaid rent and loss of income and the tenant's application for the recovery of his filing fee.

Issues to be decided

Is the landlord entitled to a monetary order? Is the tenant entitled to the recovery of his filing fee?

Background and Evidence

The landlord testified that the tenancy started March 01, 2010 when the parties entered into a written tenancy agreement for a fixed term of one year. The monthly pad rent is \$595.00. For reasons unrelated to this dispute, the tenant did not move in. On July 27, 2010 he served the landlord with a one month notice to end the tenancy.

The tenant did not pay rent on August 01, 2010 and on August 05; the landlord served the tenant with a ten day notice to end the tenancy. The tenant agreed that he had not paid rent for August.

The landlord stated that he advertised the availability of the unit on site and on the internet, but was unsuccessful in finding a tenant. The landlord has applied for rent for the month of August and for loss of income for the remainder of the fixed term which ends on February 28, 2011.

Analysis

Based on the sworn testimony of both parties, I find that the tenant did not pay rent for August and therefore owes the landlord \$595.00 for August.

Section 38 of the *Manufactured Home Park Tenancy Act* states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that:

- (a) Is not earlier than one month after the date the landlord receives the notice
- (b) Is not earlier than the date specified in the tenancy agreement as the end of the tenancy and
- (c) Is the day before the day in the month on which the tenancy is based that rent is payable under the tenancy agreement.

The parties were in a fixed term tenancy agreement and the tenant breached this agreement by ending the tenancy prior to the end date as specified in the tenancy agreement. The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

In all cases, the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent.

In this case the landlord attempted unsuccessfully to mitigate his losses by advertising the availability of the rental pad. Therefore, I find that the landlord is also entitled to loss of income for September. The landlord has not yet incurred a loss of income for the balance of the fixed term and therefore the portion of his application for loss of income for the period of October 2010 to February 2011 is dismissed with leave to reapply.

Overall, the landlord has established a claim for a total of \$1,190.00 which consists of rent for August and loss of income for September 2010. Accordingly, I grant the landlord an order under section 60 of the *Manufactured Home Park Tenancy Act*, for the amount of \$1,190.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The tenant has not proven his case and must therefore bear the cost of filing his own application.

Conclusion

The landlord is granted a monetary order for **\$1,190.00**.

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 29, 2010.

Dispute Resolution Officer