



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes DRI, FF, O, OLC, RR

Introduction

A extensive amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issues(s) to be Decided

This hearing dealt with 18 joined applications in which the applicants made numerous allegations. I have dealt with the allegations, one at a time, below.

Decision and reasons

Allegation #1

Dispute illegal rent increases from January 1/2008 (we have a rent increase as well as the water, garbage and sewer) which in some tenant's cases have 2 or 3 increases in a 12 month period. In March of each year Merritt City Hall gives the landlord the new rates for water, garbage and sewer, landlord gives an increase for said effective September 1 and again effective January 1 each year. In May 2008 our rent increase was based on the 106 rentable pad spaces for September 1/2009, and for September 1/2010 our rent increases are now based on the 60 occupied spaces. A rent increase is every year effective September 1. I request rent reduction for the overpaid rent for each tenants from January 1/2008 up to the current when the resolution hearing is held.

Analysis

It is my finding that this is not a rent increase by the landlord, it is an increase in utilities charged by the city and since the majority of the tenancies do not include utilities, the landlord has not increase the rent he has only passed on the increase in utilities.

There has already been more than one dispute resolution hearing dealing with this matter and the Dispute Resolution Officer's have found that the tenants must pay the increase in utilities charged by the city because rent does not include utilities.

There are two tenancies in this mobile home park in which utilities are included; however the landlord has not illegally increase the rent in these tenancies either, as he has used the formula allowed in the Manufactured Home Park Tenancy Act to arrive at the rent increase given.

The tenants have argued that, in the past, the landlord included 106 lots in the manufactured home park when calculating the proportion of local government levies however now he is only including 60 lots; however the landlord has shown evidence that the city only charges those levies on occupied lots and at this time there are only 60 occupied lots. Therefore it is my finding that the landlord's calculations are accurate.

Allegation #2

Dispute tenants having to pay for six evergreen trees to be planted in our yards and to have a red brick driveway put in, it has to be done either at point-of-sale or move in. I request the landlord to no longer make the aforementioned a condition of moving in or moving out at the seller or purchaser's expense.

Analysis

This same issue was raised in a previous application brought by a tenant of this mobile home park and at that time the dispute resolution officer found that the requirement to pay for evergreen trees and a driveway was unconscionable however that finding was overturned in the Supreme Court of British Columbia.

Since the Supreme Court of British Columbia has already made a finding on this matter I am not willing to issue any orders against the landlord.

Allegation #3

The landlord refuses “assignment of tenancy agreement” for anyone that sells, therefore everyone pays a different amount of rent. I request the landlord be in compliance with the Act and sign the “assignment of tenancy agreement”.

Analysis

Both the landlord and the tenants testified that the tenants have never requested an assignment of the tenancy in writing as required by the Act.

The Manufactured Home Park Tenancy Regulation states:

Written request for consent to assign or sublet

44 (1) Sections 45 *[response within 10 days]* and 46 *[deemed consent]* apply to a home owner's request for consent to assign or sublet only if the home owner requests the consent of the landlord of the park to assign or sublet in writing in the form approved by the director.

(2) The home owner must serve the request on the landlord

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- (a) in accordance with section 81 of the Act [*service of documents*], and
 - (b) within sufficient time prior to the effective date of the proposed assignment or sublease to allow the landlord to respond under section 45 (1) (c) [*response within 10 days*].
- (3) The written request under subsection (1) must be signed by the home owner and must provide all of the following information:
- (a) the name and address of the home owner making the request;
 - (b) the name and address of the landlord or landlord's agent;
 - (c) the proposed effective date for the assignment or sublease;
 - (d) the name of the proposed purchaser or subtenant;
 - (e) the current address of the proposed purchaser or subtenant, the length of time the proposed purchaser or subtenant has lived at that address and the name and telephone number of the landlord, if any, for that address;
 - (f) if the length of time at the address provided under paragraph (e) is less than 2 years, the previous address of the proposed purchaser or subtenant, the length of time the proposed purchaser or subtenant has lived at that address and the name and telephone number of the landlord, if any, for that address;
 - (g) the names and telephone numbers of two personal references for the proposed purchaser or subtenant;
 - (h) the signed consent of the proposed purchaser or subtenant authorizing the landlord to contact the other landlords whose names are provided under paragraphs (e)

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and (f) and the personal references provided under paragraph (g) for the purpose of verifying or obtaining information relevant to the request to assign or sublet;

(i) if the manufactured home site is in a park in which every manufactured home site is reserved for rental to a tenant who has reached 55 years of age or to 2 or more tenants, at least one of whom has reached 55 years of age, as set out in section 10 (2) (b) (i) of the *Human Rights Code* [permitted age requirements], the date of birth of the proposed purchaser or subtenant who meets the age requirement and proof of that person's age;

(j) if the request is for consent to sublet, a statement that the home owner has complied with section 50 (2) [effect of sublease];

(k) if the request is for consent to assign,

(i) the current monthly rent for the manufactured home site,

(ii) the effective date of the most recent legal rent increase,

(iii) the proposed purchaser's signed consent authorizing the landlord to obtain a credit report on the proposed purchaser,

(iv) the proposed purchaser's signed statement that he or she has been informed of and agrees to comply with

(A) the tenancy agreement, and

(B) the applicable rules,

(v) a copy of

(A) any part of the tenancy agreement that is in writing, and

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- (B) any of the rules that are in written form and that apply to the tenancy of the home owner, and
- (vi) a copy of any outstanding orders or notices given under the Act respecting the manufactured home park site;
- (l) any additional information required by the form approved by the director referred to in subsection (1).

Since the tenants have never served the landlord with a request to assign the tenancy agreement as required, the landlord is under no obligation to assign a tenancy agreement and there is no issue of noncompliance with the Act.

Allegation #4

Landlord does not give receipts for any money paid to them in cash, ie. Late rent payment, overdue rent any money he requests from tenants in cash. The late rent charge is \$50.00 if the rent is not paid by noon on the first day of each month. I request the \$50.00 late fee if rent not paid on the first day of each month by 12:00 noon be stopped.

Analysis

The receipt issue cannot be dealt with in a joined application, because the applicants testified that there are various situations with various tenants with regards to receipts, and it is not a universal issue.

I therefore dismiss this portion of the claim with leave to reapply, and the applicants can apply under separate applications if they wish to do so.

The second portion of this allegation deals with late fees, and the Act is specific on those fees, in that the landlord can only charge a late fee of \$25.00 and therefore a fee of \$50.00

is not allowed. Further the requirement that rent be paid by 12:00 noon on the first day of the month is not a reasonable clause in the tenancy agreement. The day on which rent is to be paid is a required standard clause in the tenancy agreement and it is my decision that it would not be reasonable for the landlord to only allow a portion of that day for paying the rent. Therefore rent is considered paid on time if it is paid on the first day of the month and the late rent charge cannot be charged if the rent is paid on the first of the month.

I am not willing to issue any order for the return of late payment fees on this application however, because again, this issue is not universal to all the applications. I therefore dismiss with leave to reapply the claims for late fees, and the applicants can apply under separate applications if they wish to do so.

Allegation #5

There is NEVER any snowploughing done in this park in the winter. I request the Mobile Home Park to be snowploughed when it snows in the winter months.

Analysis

The applicants have provided no specifics of this claim simply stating that the landlord NEVER snowploughs. This claim is too vague and I am not willing to issue a blanket order that the park be snowploughed when it snows, as it may not always be necessary to do so.

Allegation #6

landlord will not pay any money to tenant that is ordered to do so, I request any monies awarded to tenants be deducted from our future rents, if this case is ruled in our favour, also request the filing fee(s) be deducted from our rent.

Analysis

The applicants have provided no evidence to support their claim that the landlord will not pay money if he is ordered to do so. Further if a monetary order is issued against the landlord, section 65(2) states:

65(2) If the director orders a landlord to pay an amount to a tenant, including an amount under subsection (1), the amount may be deducted from any rent due to the landlord.

Therefore no order is the required.

The applicants have also requested an order that their contracts or leases be in compliance with the Mobile Home Tenancy Act effective immediately; however they have provided no evidence to show that the contracts and or leases are not in compliance and therefore I am not willing to issue any blanket order.

Conclusion

I am not willing to issue any orders against the respondent, and I further order that the applicants bear the cost of the filing fees they paid for their applications for dispute resolution.

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