

DECISION

Dispute Codes Tenant: CNR, CNC
Landlord: OPR, MNR, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution.

The Tenant applied for an order to cancel the Landlord's Notice to End Tenancy for cause and for unpaid rent. I note that the Notice referred to is for unpaid rent and not for cause.

The Landlord applied for an order of possession due to unpaid rent, a monetary order for unpaid rent, and to recover the filing fee for the Application.

The parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

Issue(s) to be Decided

Is the *Manufactured Home Park Tenancy Act* applicable to this Dispute?

Is the Tenant entitled to an Order to cancel the Notice to End Tenancy?

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

Background and Evidence

The Landlord operates a recreational vehicle park (the "park") and had a concern as to whether or not this dispute was under the jurisdiction of the *Manufactured Home Park Tenancy Act*. The affirmed testimony by the Landlord stated that the Tenant paid rent on a monthly basis for a site at the park and the unit in question is a 5th wheel recreational vehicle.

Under the definitions of the *Manufactured Home Park Tenancy Act*, a manufactured home is, in part, "a structure, whether or not ordinarily equipped with wheels, that is:

- (a) Designed, constructed or manufactured to be moved from one place to another by being towed or carried, and

(b) Used or intended to be used as living accommodation.

A manufactured home park, under the Act, is “a parcel or parcels, as applicable, on which one or more manufactured home sites that the same landlord rents or intends to rent and common areas are located.

I find that this dispute falls under the jurisdiction of the *Manufactured Home Park Tenancy Act*.

Pursuant to the Rules of Procedure, the Landlord proceeded first to explain why the Ten Day Notice to End Tenancy was issued.

Based on the affirmed testimony of the Landlord and affirmation of the Tenant, I find that the Tenant was served with a Notice to End Tenancy for non-payment of rent on August 12, 2010, (the “Notice”) with a stated effective date of August 22, 2010.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice. The Tenant’s application date indicated he did not file to dispute the Notice within the five days, but paperwork in the file from the Residential Tenancy Branch confirmed otherwise. I accept that the Tenant did file within the proper time frame and is disputing the Notice.

This month-to-month tenancy began in February 2009. There is no written tenancy agreement, but the parties agreed the amount of monthly rent was \$450.00, which included the pad site, hydro, water, sewer and basic cable. The Landlord testified that beginning in August 2010, the monthly rent was increased unilaterally to \$657.35 to pay off the rental arrears, based on the Landlord’s calculation. The Tenant did not agree to this amount.

The Landlord testified and submitted evidence that he allowed the Tenant to work off some of his monthly rental obligation by working around the park for \$10.00 per hour, recording his hours and turning in the log to the office. I note there is no written agreement of employment or agreed upon hourly rate.

The Landlord further testified that in July 2010, he approached the Tenant about alleged rental arrears, which resulted in a statement of accounts being issued to the Tenant. This statement was submitted into evidence, which I note lists an incorrect figure for total rent paid.

The Landlord testified that he did not always collect the monthly rental payments, but that duty was shared by himself and seasonal workers and that the current amount of unpaid rent was \$2,821.01, including interest.

The Landlord admitted that he accepted payments of \$450.00 each for September and October 2010, and issued a receipt for the same, but without the use of the term "For Use and Occupancy."

The Tenant testified that his agreement for work around the park was for \$15.00 per hour for some tasks, as paid to other Tenants by the Landlord. He further testified that he often paid partial rental payments without getting a receipt, and that he paid the August rent on July 21, 2010. The Landlord confirmed this payment, but stated it was applied to the rental arrears.

The Tenant confirmed he owed unpaid rent, but in the amount of \$180.99.

Analysis

Based on the foregoing, the evidence and testimony, and on a balance of probabilities, I find as follows:

I find the Notice to End Tenancy was cancelled through the actions of the Landlord. Once the Landlord accepted further rent payments without issuing the Tenant a receipt saying it was for use and occupancy only, the Landlord reinstated the tenancy. Therefore, I **order the Notice be cancelled and is of no force or effect.**

I find the Landlord is not in compliance with Section 13 of the Act for failure to prepare a written tenancy agreement containing the standard terms and with Section 14 in attempting to amend or change a standard term, in this case the work in exchange for rent agreement.

I find further that the Landlord is in breach of Section 35 for attempting an illegal rent increase, for failure to follow the terms under which an increase is allowed.

I accept the evidence of the parties that the agreed upon rent was \$450.00 per month, payable on the 1st day of each month and that, in addition to the pad rental, the rent is to include electricity, water, sewer and basic cable. The Landlord may not increase the rent *except* as allowed under the Act in Section 36 and 36.

Under authority of Section 55 (2) of the Act, I direct the Landlord and Tenant enter into a written tenancy agreement pursuant to these terms and I **Order the tenancy agreement comply with the Act as set forth in Section 13.**

I find that I am unable to determine the amount of unpaid rent, due to the disputed testimony, appearance of cash payments without a receipt, conflicting evidence supplied by the Landlord, the lax bookkeeping and lack of a written tenancy agreement. The onus is on the Landlord to supply evidence of the correct amount owed.

I find that the Tenant disputed the amount owed as stated by the Landlord in July, believed he paid rent for the month of August 2010, and made timely application for

dispute resolution. There I dismiss the Landlord's application for a monetary order and request for reimbursement of the filing fee.

Further I find that that the Tenant owes unpaid rent in the amount of **\$180.99**, and I require the Tenant to pay the full amount as set out above by October 31, 2010, failing which the Landlord can apply section 39 of the Act to end the tenancy.

I make no finding as to the agreement regarding the Tenant's employment and the terms, as employment issues are outside the scope of the *Manufactured Home Park Tenancy Act*.

Conclusion

The Landlord and Tenant are directed to enter into a written tenancy agreement and the terms are to comply with the Act.

The Landlord's 10 Day Notice to End Tenancy is not valid and not supported by the evidence therefore, the Tenant is granted an order dismissing the Notice to End Tenancy.

The Landlord's Application is dismissed.

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: October 12, 2010.

Dispute Resolution Officer