



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, MNDC, OLC, RP, RR

Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution, seeking a monetary order under the Act or tenancy agreement, and orders for the Landlord to comply with the Act and tenancy agreement, and for orders for the Landlord to make repairs to the rental unit.

The Tenants served the Landlord with the Notice of Hearing and the Application in person on September 7, 2010. The Agent for the Landlord acknowledged service of the documents and I find the Landlord was served in the time and manner in accordance with the Act.

The Tenants and Agent for the Landlord 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.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Are the Tenants entitled to the relief sought in their Application?

Background and Evidence

There is no written tenancy agreement, but the parties agree the tenancy began on June 1, 2009, and continues on a month to month basis. The Tenants' rent was originally \$246.70, but was increased to \$255.84 beginning February 1, 2010, less than a year after the tenancy began.

The Landlord issued the Tenants a One Month Notice to End Tenancy for Cause (the "Notice") on August 30, 2010, with a stated move out date of August 30, 2010. The Agent for the Landlord testified he made a mistake with dates on the document. The Notice alleged the Tenants seriously jeopardized the health or safety or lawful right of another occupant or the Landlord and has engaged in illegal activity that has or is likely to damage the Landlord's property.

According to the Rules of Procedure, the Agent for the Landlord testified first to explain why the Notice was issued to the Tenants.

The Agent for the Landlord testified that he issued several citations to the Tenants for the number of animals kept on their property and stated that this was in violation of the rules and regulations. When queried, the Agent for the Landlord admitted that he had no copy of the rules and regulations, but that all the tenants were informed of the rules. I find the Landlord could not produce any evidence of any instance of the alleged causes listed on the Notice.

The Tenants testified they did and still have a number of cats and pets, but were told by the Landlord when they moved in that was acceptable if they were all spayed or neutered. The Tenants testified that the Landlord tried to verbally change this policy.

The Tenants testified that the Landlord has not fixed the septic tank and that, since the beginning of the tenancy, there is a foul odour constantly being emitted from their plumbing, that their sinks and toilets are plugged up and, that despite requesting the Landlord repair the sewer and septic on numerous occasions, the problem remains.

The Tenants testified that their neighbour shares the same sewer line and septic tank, but that the Landlords do not bother them. The Tenants testified that there is a court order in place by the local health authority requiring the Landlord to convert the property's sewer system to the city's system, but this has not been done. I note that there is no evidence of the court order and the Agent for the Landlord testified that he was not aware of a court order.

The Tenants testified that they are unable to sell their manufactured home due to the smells and condition of the premises.

The Tenants testified that they have been served 5 notices of a rent increase since the tenancy began on June 1, 2009, the first 3 being on scraps of paper. The current increased rent is \$255.84.

The Landlord in rebuttal stated that the Tenants' neighbours complained of the smells and that in July 2010, a plumber fixed the septic tank, cleaned and cleared the sewer line, but that the problem was the cat hair in the line. The Tenants stated that their septic tank was cleaned once, but not the main tank. I note the Agent for the Landlord submitted no evidence of the cleaning or statements concerning the cat hair.

Analysis

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

I find the Landlord's One Month Notice to End Tenancy for Cause to contain fatal errors in the dates, is not supported by the evidence, and therefore has no force and effect. I **order** that the Notice be cancelled.

I find the Landlord has breached Section 35 of the Act regarding Notices for Rent Increases and, therefore I find that the original and subsequent increases are invalid and I **order** that the monthly rent for the site be returned to the same as it was at the beginning of the tenancy, **\$246.70**, contingent on any future increases in compliance with the Act. Therefore, I **order the Landlord to repay the Tenant all rent paid in excess of \$246.70 per month since the rent was increased to that amount in February 2010**, and this amount, **\$82.26**, may be deducted from the reduced rent as described below.

The Landlord is required under section 26 of the Act to provide and maintain the Manufactured Home Park in a reasonable state of repairs and which complies with health, safety and housing standards required by law. I find the Landlord has breached section 26 of the Act and I order the Landlord to do the following in the rental unit:

1. Immediately clean, repair or replace the septic tank and sewer line so as to ensure the plumbing in the Tenants' home meets health and safety standards.

I find that the Landlord has failed to act in a timely manner to address these repairs, despite the ongoing requests of the Tenants. Therefore, I find that the evidence supports the Tenants' claim that they endured a substantial devaluation of the tenancy since the tenancy began on June 1, 2009.

I **order** the Landlord to compensate the Tenants in the amount of \$25.00 per month retroactively since June 1, 2009, in the amount of **\$425.00**. This amount may also be satisfied as described below.

I find that the Tenants have established a total monetary claim of **\$507.26**, comprised of **\$82.26** for rent paid in excess of \$246.70 since February 2010, and **\$425.00** for retroactive rent abatement.

In satisfaction of the monetary claim, I **order** the Tenants **withhold** from rent as follows:

- November 2010 rent-----\$246.70 (no rent payment required)
- December 2010 rent_____ \$246.70 (no rent payment required)
- January 2011 rent-----\$13.86 (rent payment of \$232.84 required if repairs are made according to the following paragraph, if not, then rent payment for January will be \$207.84)

I also order that the monthly rent be reduced beginning in January 2011, to **\$221.70** for continuing rent abatement of \$25.00 per month until such time as the Landlord

completes the above ordered repairs, files and pays for an Application for Dispute Resolution, proves the above work has been completed in a good and workmanlike manner, and receives an order from a Dispute Resolution Officer that the rent may return to \$246.70 per month.

Conclusion

The Landlord's One Month Notice to End Tenancy is not valid and not supported by the evidence therefore; the Tenants are granted an order dismissing the Notice to End Tenancy.

The Tenants are entitled to an order for monetary compensation and for rent reduction.

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 22, 2010.

Dispute Resolution Officer