



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, OLC, RP, RR, O

Introduction

This is the Tenant's application for compensation for damage or loss; an Order that the Landlord comply with the Act, regulation or tenancy agreement; an Order that the Landlord make repairs to the rental site; and to recover the cost of the filing fee from the Landlord.

This Hearing initially took place on November 3, 2010, and was adjourned to reconvene on December 3, 2010. The purpose for reconvening was so that the Landlord could resubmit his evidence to the Residential Tenancy Branch and to the Tenant. The Tenant was served with the Landlord's evidence by registered mail, sent on October 22, 2010, at 6:40 p.m. in accordance with the provisions of Section 89(1)(c) of the Act. The Landlord provided the tracking number in evidence.

The Tenant testified that she went to Arizona in late October for the winter and stated that she did not receive the Landlord's evidence package before she left. The Landlord testified that he faxed his evidence package to the Residential Tenancy Branch on October 20, 2010, and stated that he had confirmation that the fax was received. The Landlord was granted leave to re fax the evidence package and fax confirmation to the Residential Tenancy Branch and to the Tenant in Arizona.

Issues(s) to be Decided

- Did the Tenant overpay rent for the periods between September 1, 2009 to August 31, 2010 and September 1, 2010 to November 1, 2010?

- Is the Tenant entitled to a monetary award for the cost of hiring a plumber to make repairs to the rental site?
- Should the Landlord be ordered to remove a dirt pile from the back of the rental site?

Background and Evidence

The Tenant gave the following testimony:

Monthly rent includes utilities. The Tenant's annual rent increase is effective on September 1st of each year. In a previous Decision, dated September 24, 2008, a Dispute Resolution Officer found that monthly rent for the site was \$321.47 until August 31, 2009.

The Tenant submits that monthly rent for the period of September 1, 2009 to August 31, 2010 should have been \$333.36 per month, calculated as follows:

$$\$321.47 \text{ (monthly rent)} \times 12 \text{ (months)} = \$3,857.64$$

$$\$3,857.64 \text{ (yearly rent)} \times 3.7\% \text{ (allowable rent increase)} = \$4,000.37$$

$$\$4,000.37 \text{ (yearly rent)} / 12 \text{ (months)} = \$333.36$$

The Tenant paid \$346.24 per month from September 1, 2009 to August 31, 2010, and seeks to recover the overpayment in the amount of \$154.56 (\$346.24 - \$333.36).

In addition, the Tenant believes that she has overpaid rent for the period of September 1, 2010 to November 1, 2010 in the amount of \$75.18, which she calculates as follows:

$$\$333.36 \text{ (amount the Tenant calculates she should have paid)} \times 12 = \$4,000.32$$

$$\$4,000.32 \text{ (yearly rent)} \times 3.7\% = \$4,148.33$$

$$\$4,148.33 / 12 = \$345.69 \text{ (amount the Tenant believes monthly rent should be)}$$

$$\$370.75 \text{ (current rent Tenant is paying)} - \$345.69 = \$25.06$$

$\$25.06 \times 3 \text{ months (September, October, November, 2010)} = \75.18

The Tenant seeks a monetary award in the amount of \$229.74 for overpayment of rent and a determination that the monthly rent until August 31, 2011 is \$345.69. (NOTE: It is important to note that the Tenant used the wrong figure in calculating the maximum allowable percentage for the rent increase. The maximum allowable percentage for increases that took effect in 2010 was 3.2 %, not 3.7%)

The Tenant questioned the number of lots indicated in the Landlord's calculations for the 2009 and 2010 rent increases.

The Tenant testified that in January, 2010, the Landlord gave her permission to hire a plumber to repair a leak underground at the rental site. Leaks below the pad shut off are the Landlord's responsibility. Leaks below the pad shut off are the Tenant's responsibility. The Tenant hired a plumber, who fixed the leak and issued a bill in the amount of \$112.52. The Tenant testified that the Landlord told the plumber that he would pay the bill if the plumber changed the wording on the bill to state that the leak had occurred above the ground. The plumber changed the bill, but the Landlord refused to pay the bill. In May, 2010, the plumber asked the Tenant to pay the bill. The Tenant has not paid the bill. The Tenant seeks an Order that the Landlord be ordered to pay the plumber's bill.

In November, 2009, the Landlord piled a large mound of dirt up to the Tenant's fence line. The Landlord said he was going to move it, but hasn't. The Tenant cannot move her boat or pool because the dirt pile is in the way. The Tenant seeks an Order that the Landlord remove the dirt pile and provide the Tenant with access to her site.

The Landlord gave the following testimony:

The Landlord used the Notice of Rent Increase form provided on the Residential Tenancy Branch's web site and typed in the information. The form automatically calculates the amount of the rent increase.

The Landlord testified that the leak was above the ground. He stated that it was important to understand that the repair work was ordered by the Tenant and that the Landlord did not authorize the Tenant to hire a contractor.

The Landlord testified that the dirt pile was in a 'buffer zone'. He stated that no tenants had access to the buffer zone because it was not common property. The Landlord testified that the Tenant does have access to the common area and roadway, via the front of her site. The Landlord stated that the dirt was used for spring modifications and that he didn't have a problem moving the dirt to allow access to the Tenant, if requested by the Tenant, but not for permanent access.

Analysis

There was conflicting testimony with respect to whether or not the Tenant had the Landlord's permission to hire the plumber, or whether it was the Tenant's or the Landlord's responsibility to pay for the repairs. The invoice provided by the Tenant is made out to the Landlord. The Tenant testified that she has not paid the invoice and therefore has not proven a loss. The burden of proof is on the Tenant to prove, on the balance of probabilities, that the Landlord gave her permission to hire the plumber. She has not met this burden. It will be up to the plumber to pursue whichever party he deems responsible for payment of the bill. This portion of the Tenant's application is dismissed.

The Landlord provided a sketch showing the location of the dirt pile, manufactured home, fences, and the site. I accept the Landlord's testimony that the dirt pile is not

located on the Tenant's site, or on common property, and that the pile is situated in a buffer zone. The Tenant's application for an Order that the Landlord permanently remove the pile is dismissed.

This is the fourth application the Tenant has made with respect to annual rent increases.

In 2007, the Act was amended to permit landlords to add a "proportional amount" to the "annual inflation rate plus 2%" increase allowed without the necessity of applying for an additional rent increase. Proportional amount is defined as the "sum of the change in local government levies and the change in utility fees divided by the number of manufactured home sites in the landlord's manufactured home park." The Tenant continues to file Applications disputing rent increases because she believes the increases are calculated by including utilities, which are included in her rent. However, since 2007, the Act has allowed landlords to pass on a **portion of the additional levies** to tenants, regardless of whether rent includes utilities. The levies apply to government levies and utility fees used by the **whole** park, not just individual sites. The purpose of the legislation is to share the costs of rising services by all members of a manufactured home park. The legislation recognizes that it is unfair to expect the landlord to bear the whole cost of the rising cost of services shared by the park.

This is **not** a change to a material term of the Tenant's tenancy agreement. The Tenant continues to have utilities included in her rent, but the rent is increased to reflect the proportional cost of providing these services.

The 2008 Notice of Rent Increase calculates the Tenant's proportion based on 106 lots. The 2009 and 2010 Notices calculate the Tenant's portion based on 60 lots. No explanation was attached to the 2009 or 2010 Notice with respect to how the Landlord calculated the number of lots, or why the number differed from the 2008 Notice. For the purpose of calculating proportional amounts, this is based on the total number of lots, not the number of lots that are currently tenanted. Therefore, I find that the Notices

dated May 20, 2009 and May 23, 2010 are invalid and the monthly rent remains at \$321.47. The Tenant has overpaid rent as follows:

September 1, 2009 to August 31, 2010	
(\$24.77 x 12)	\$297.24
September 1, 2010 to November 30, 2010	
[(\$24.51 + \$24.77) x 3]	<u>\$147.84</u>
TOTAL	\$445.08

The Tenant has been partially successful in her application and is entitled to recover the cost of the \$50.00 filing fee from the Landlord.

The Tenant may deduct the amount of \$495.08 from future rent due to the Landlord. The monthly rent remains at \$321.47 until it is increased in accordance with Section 35 of the Act.

Conclusion

The Notices of Rent Increase issued May 20, 2009 and May 23, 2010 are invalid and of no force or effect. The monthly rent remains at \$321.47, until it is increased in accordance with the provisions of Section 35 of the Act.

The Tenant may deduct \$495.08 from future rent due to the Landlord.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Manufactured Home Park Tenancy Act*.

Dated: December 16, 2010.
