Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Final Decision

Dispute Codes:

MNR, FF

Introduction

This is an application for monetary compensation for rental arrears and utilities owed to the landlord by the tenant. The landlord made application on June 2, 2010 and the above noted hearing was originally scheduled to be heard on October 19, 2010. However, neither party had signed into the hearing and the application was therefore dismissed with leave. The landlord applied for review consideration and on December 8, 2010 was granted a rehearing based on a finding that the applicant landlord had called into the conference call but was never connected, through no fault of the landlord. A new hearing was ordered and was scheduled for January 4, 2011 at 11:00 a.m. At the outset of the reconvened hearing on January 4, 2011, the landlord advised that he had not served the tenant with the Review Decision dated December 8, 2010 nor did he serve the notice of the re-hearing scheduled for January 4, 2011. The landlord argued that this was because he was given the impression that the tenant had been served by the Residential Tenancy Branch as was implied in the wording of the December 8, 2010 review decision.

During the proceedings held on January 4, 2011, it was found that there was a mandatory obligation under the Act and Rules of Procedure requiring the applicant to serve the respondent with the Notice of Hearing. Given the misunderstanding that occurred in the Review Decision, the January 4, 2011 hearing was adjourned to be reconvened and heard on February 1, 2011 in order to allow the landlord to properly serve the tenant with the new Notice of Reconvened Hearing.

Preliminary Matter: Service

At the outset of the reconvened hearing, the landlord testified that the tenant was served with the Notice of Reconvened Hearing by registered mail sent to an address that was obtained by the landlord through inquiries and observation and which was the same address where registered mail addressed to the tenant in June 2011 had

previously been successfully delivered. I accepted that this address was a valid service address for the tenant. The landlord was then asked to confirm that the tenant was served by providing the Canada Post tracking number. The landlord did not provide the tracking number to verify service, but testified that this data had already been faxed into the Residential Tenancy Branch on January 31, 2011, the day before the hearing. I accepted the landlord's testimony that this evidence had been sent in and that a copy of the Canada Post verification was on file and could be obtained subsequent to the hearing in order to prove service pursuant to section 82.

I agreed to proceed with the hearing on this basis. After the hearing concluded I was able to obtain the faxed-in evidence that confirmed registered mail had been sent to the tenant. Accordingly, I find that the tenant was properly served with the Notice of Hearing and the landlord's evidence.

Issue(s) to be Decided

The issue to be determined, based on the testimony and evidence, is whether or not the landlord is entitled to monetary compensation for rental arrears owed and utilities owed.

Background and Evidence

The tenancy began in September 2008 and ended on March 31, 2009. Rent was set at $400.00. There was no written tenancy agreement. However, according to the landlord, electric utilities were to be paid directly to the landlord on a monthly basis. The landlord testified that there were no invoices provided nor written demands for payment as it was a practice of the landlord to verbally advise the tenant what amount was owed for the hydro used based on the tenant's meter. The landlord testified that the tenant had not paid $677.00 owed for hydro.

The landlord testified that the tenant fell into arrears for rent accruing a debt of $667.00 and provided a rent ledger showing the rent and utility account for the tenant. The landlord was claiming $1,344.00 in compensation for rent and hydro.

.Analysis

With respect to rent owed, I find that section 20 of the Act states that rent must be paid when it is due, under a tenancy agreement. I find that the tenant owed $667.00 in rent.

With respect to the $677.00 accrued utility arrears, I find that section 39(6) of the Act states that unpaid utilities can be considered as rental arrears if a tenancy agreement requires the tenant to pay utility charges to the landlord, and they remain unpaid more than 30 days after the tenant receives a written demand for payment. Only if the above conditions are met, can unpaid utility charges be considered as unpaid rent or used as a

basis to give notice. I find there was no written tenancy agreement to verify that the hydro utility payments were to be made to the landlord. I also find that, due to the method of billing for the hydro, the landlord had never issued the required 30-day written demand to pay the outstanding utility charges. Moreover, evidence that was submitted to prove the utility arrears consisted of a ledger statement created by the landlord. Accordingly I find that the portion of the landlord's monetary claim for the $677.00 hydro charges must be dismissed.

Given the above, I find that the landlord has established a total monetary claim of $717.00 comprised of $667.00 in rental arrears and the fee $50.00 paid by the landlord for this application.

Conclusion

I hereby grant the Landlord an order under section 67 for $717.00. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The remainder of the landlord's application is dismissed without leave.

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: January 4, 2011.

Dispute Resolution Officer