



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR

Introduction

This matter was conducted by way of Direct Request Proceeding, pursuant to section 48(4) of the Act, and dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession and a Monetary Order for unpaid rent.

The Landlord provided evidence which shows that only one of the named Tenants on its application is a Party to the tenancy agreement. In the circumstances, I find that because L.M. is not a party to the tenancy agreement, she is not properly named as a party in these proceedings and the style of cause is accordingly amended to remove her. The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 27, 2011 the Landlord served the Tenant (T.M.) with the Notice of Direct Request Proceeding via registered mail. Section 83 of the Act deems a document delivered in that manner to have been received (or served) on the fifth day after it was sent.

Based on the evidence and written submissions of the Landlord, I find that the Tenant was served as required by s. 82 of the Act with the Dispute Resolution Direct Request Proceeding documents.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent and to a Monetary Order for unpaid rent pursuant to sections 39(4), 48 and 60 of the *Manufactured Home Park Tenancy Act (Act)*.

Background and Evidence

The Landlord submitted the following documentary evidence:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the Tenant;
- A copy of a residential tenancy agreement which was signed by the parties on April 14, 2000 for a month-to-month tenancy beginning October 1, 1994 for the quarter-annual rent of \$75.00 due in advance on the 1st day of each quarter term; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities which was issued on January 12, 2011 with an effective vacancy date of January 29, 2011 due to \$290.00 in unpaid rent.

The evidence filed by the Landlord indicates that the Tenant failed to pay \$290.00 alleged to be owed as rent for the quarter, January to March 2011, and that the Tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by registered mail on January 12, 2011. The Notice states that the Tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The Tenant did not apply to dispute the Notice to End Tenancy within five days.

Analysis

I have reviewed all of the documentary evidence and accept that the Tenant been served with the Notice to End Tenancy as declared by the Landlord. The Notice was deemed to be received by the Tenant 5 days after it was mailed, or on January 17, 2011. Consequently, the effective date of the Notice is amended to January 27, 2011 pursuant to s. 46 of the Act.

Although the Landlord claimed that \$290.00 was owed for rent arrears, I find that there is insufficient evidence of this. In particular, the Landlord provided no evidence to support the amount of rent sought which is substantially more than the amount stated in the Parties' tenancy agreement. The ledger provided by the Landlord shows that the rent was increased from \$75.00 to \$180.00 effective January 1, 2010 and to \$300.00 effective July 1, 2010, however, the Landlord did not provide a copy of an enforceable Notice of Rent Increase or the written agreement of the Tenant in support of those rent increases as required by Part 4 of the Act.

Furthermore, I cannot conclude that the Tenant even owes the rent of \$75.00 stated in the tenancy agreement for the quarter, January 1 to March 31, 2011, because if the Tenant has been paying the increased rent pursuant to an *illegal rent increase*, the Tenant would be entitled pursuant to s. 36(5) of the Act to deduct any overpayments from his rent. As a result, I find that there is insufficient evidence to support the Landlord's application for an Order of Possession and a Monetary Order for unpaid rent and it is dismissed with leave to reapply upon providing evidence to support the rent increases.

Conclusion

The Landlord's application is dismissed with leave to re-apply. 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: February 02, 2011.

Residential Tenancy Branch