



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNR FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to cancel a notice to end tenancy for unpaid rent and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenants to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on January 25, 2011. Canada Post receipt numbers were provided in the Tenants' evidence. The Landlord is deemed to be served the hearing documents on January 30, 2011, the fifth day after they were mailed as per section 90(a) of the *Act*. I have found the Landlord to have been sufficiently served notice of the Tenants' application.

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

Issue(s) to be Decided

1. Has the Landlord breached the *Act*, regulation or tenancy agreement?
2. Is the 10 Day Notice to End Tenancy for unpaid rent valid?

Background and Evidence

The grounds keeper testified that she has resided at the manufactured home park for approximately 14 years and continues to work as the grounds keeper. She was approached by the Landlord sometime in September and requested to collect rent from the Tenants because the bank account would no longer be available to tenants. She confirmed that she collected rents for October, November, and December 2010.

The Tenants testified they have occupied this manufactured home park pad since September 1, 1996, when they entered into a tenancy agreement with the previous

owner. The park was sold sometime in 2009. They were later introduced to the new property manager; the person named as the Landlord in this dispute, and later made arrangements to deposit their rent payments into a trust bank account that was set up by the Landlord's real estate business. Rent is payable on the first of each month in the amount of \$200.00.

The Landlord approached them in October 2009 and advised that they were required to enter into a written tenancy agreement with her. The Landlord's name is listed as her first and last name followed by (Property Manager) in brackets. The agreement was signed by the Tenants October 19, 2009 and the Landlord on October 22, 2009.

The Tenants stated they heard a rumour in mid September 2010 that rent would no longer be allowed to be deposited into the bank account so they stopped their automatic payments and awaited further instruction. The Landlord picked up their rent cheque for September 2010. They did not hear anything further from the Landlord nor did they receive any instructions in writing so they waited until the Landlord came to pick up the October 2010 rent. They continued to hear from the grounds keeper that they could give their rent to her so they finally gave their November and December payments to the grounds keeper. They held onto their January 2011 rent until they heard from the Landlord on January 10, 2011 who said they were to give their rent to the grounds keeper so another person could pick it up. They said they did not know who this other person was so they refused to give their rent to the grounds keeper.

On January 17, 2011 an Agent for the Landlord came to pick up their rent and handed them the 10 Day Notice to End Tenancy for Unpaid Rent. They stated the amount shown on the Notice is not rent but is a \$25.00 late payment fee the Landlord decided to charge them. They confirmed their tenancy agreement does not provide for a late payment charge.

The Tenants referred to their documentary evidence which included a copy of memos issued by the Landlord which demands the Tenants provide the Landlord with six months of post dated cheques. The Tenants stated they are not comfortable providing rent cheques six months in advance and prefer to send their rent payments directly to the Owner each month. They stated the Owner does not want to be involved in any of this which is why he does not have his name shown on any of the documents. They made reference to a memo provided by the Landlord January 29, 2011 which provided them with the opportunity to send their rent payments directly to the Owner at the listed mailing address. The Tenants confirmed they could fax me a copy of their tenancy agreement and a copy of the January 29, 2011 memo after the hearing.

The Landlord testified and confirmed that the trust bank account was closed after she chose to let go of her real estate license. She confirmed that she provided the Tenants verbal instructions on how to pay their future rent. She confirmed that she did not begin to provide written instructions until her first written memo of January 15, 2011. She argued the Tenants were very difficult to deal with in changing the manner in which they paid rent. She argued that they knew who her Agent was all along and they were simply being difficult because the process of paying rent had changed. She confirmed the 10 Day Notice was issued based on a late payment fee and that this fee is not provided for in the tenancy agreement.

The Landlord stated that she later told the Tenants to ignore the Notice and then refused to provide them with written confirmation that the Notice was cancelled. Now they were costing her money to come and attend this hearing.

Analysis

After the parties disconnected from the hearing I realized the Tenants were not provided with my fax number to send me a copy of their tenancy agreement and a copy of the Landlord's memo issued January 29, 2011. The Tenants were contacted immediately and provided the fax number. In the interest of upholding the principles of natural justice I have attached a copy of the documents received from the Tenants to this decision.

I cautioned the Landlord that issuing a Notice to End Tenancy is a formal legal process and that a Notice cannot be verbally cancelled. The Landlord is the author of her own misfortune of having to attend this hearing as the Tenants were required under the Act to make application to cancel this Notice.

Section 21 of the Act provides that if a landlord wishes to terminate or restrict a service, such as the opportunity to deposit rent directly into a bank account, they must provide the tenant with a minimum of 30 days written notice.

Regulation # 5 stipulates that a landlord must not charge a non-refundable fee for late payment of rent unless the tenancy agreement provides for that fee.

Upon review of the Notice to End Tenancy, I find the Notice not to be completed in accordance with the requirements of the Act for three reasons: (1) the notice was issued for nonpayment of a late payment fee which is not rent and not provided for in the tenancy agreement and (2) the Tenant's name is spelled incorrectly on the Notice, and

(3) the company name listed as the Landlord on this Notice has no rights to this tenancy as the Tenants have never been issued written notice that this company had taken over the rights to manage their tenancy agreement. Upon consideration of aforementioned, I find the 10 Day Notice to End Tenancy to be void.

The Tenants have been successful with their application, therefore I award recovery of the \$50.00 filing fee.

Conclusion

The 10 Day Notice to End Tenancy issued January 17, 2011 is HEREBY CANCELLED and is of no force or effect.

The Tenants are at liberty to deduct the one time amount of \$50.00 from their future rent payment as full compensation for the recovery of their filing fee as award above.

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 07, 2011.

Residential Tenancy Branch