



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OLC O FF

Introduction

This hearing convened on January 7, 2011, and reconvened for one hour for the present session on February 28, 2011. This decision should be read in conjunction with my interim decision of January 7, 2011.

This hearing dealt with an Application for Dispute Resolution by the Tenant to have the Landlord Ordered to comply with the *Manufactured Home Park Tenancy Act*, to clarify other issues, and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 82 of the *Act*, sent via registered mail on December 31, 2010. The Landlord confirmed receipt of the hearing documents during the January 7, 2011 hearing.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, 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 tenancy agreement continued on a month to month basis since the fixed term tenancy agreement expired October 31, 2008?
2. Has the Tenant met the burden of proof to have an Order issued to the Landlord to comply with the *Act*?

Background and Evidence

I heard undisputed testimony that the parties entered into a written fixed term tenancy agreement effective October 1, 2005. This agreement was entered into after the parties had consulted with legal counsel. The current pad rental is \$540.80 per month.

The Tenant testified that her interpretation of her tenancy agreement is that it continued on a month to month basis after October 31, 2008 because she did not enter into a new written tenancy agreement with the Landlord. She referred to page 7 of her evidence which included a photocopy of the bottom part of a document which is titled "Length of tenancy" which both her and the Landlord signed. She advised this was her tenancy agreement.

She has always provided the Landlord with one year's worth of post dated cheques for her pad rental each year. The Landlord did not cash her cheques for from November 2008 to December 2010 until after she received a letter from his lawyer dated December 16, 2010. The Landlord was able to cash her rent cheques for July 2010 to December 2010 as they were not considered stale dated. As instructed in the lawyer's letter she provided him with a cheque to cover the cost of the stale dated cheques for the period of November 2008 through to and included June 2010.

The Tenant explained how their municipality passed a by-law on October 28, 2008 that would prevent a landlord from evicting only a few tenants at a time and would require them to have a longer waiting period for development permits.

The Tenant is seeking to have the Landlord acknowledge she is a tenant, that her tenancy agreement is on a month to month basis, and to stop having his lawyer send her letters that indicate she must move. She stated she has no idea why he wants her out. She wants to be left alone to live in her home and not be troubled by these eviction letters.

The Landlord testified that his interpretation of their fixed term tenancy agreement was that he could require the Tenant to move at the end of the agreement on October 31, 2008. He is of the opinion that the Tenant's tenancy ended October 31, 2008. He agreed that he had left the matter in abeyance and only got back to dealing with it in October or November 2010. He stated he made no attempt to bring this matter before dispute resolution because he has had a lot to deal with in his life and he had a lot of businesses to run. He stated that because he has not instituted a rent increase since 2008 it should have confirmed the tenancy is over.

They had attended a previous dispute resolution hearing whereby the Landlord was successful. I asked if this previous dispute pertained to a request for an Order of Possession to which the Landlord replied that it did not and it was an unrelated matter.

The Landlord stated he is amenable to extend the Tenant's tenancy but that it would have to be for a fixed term of 4 years that would require the Tenant to vacate the property at the end of the fixed term or enter into another fixed term agreement.

The Landlord stated he was informed by his legal counsel that cashing the 2008, 2009, and 2010, rent cheques in December 2010, does not prejudice him. He confirmed that the document on page 7 of the Tenant's evidence was their tenancy agreement. He argued that he was very clear of his intentions of having fixed term tenancy agreements. When I ask why he insisted on fixed term agreements that would require tenants to vacate the property he stated he has intentions of developing the property some day. He said he advises all of his tenants they have no secured tenancies and none are long term because he may have future development plans. He confirmed there are no current plans to develop.

The Tenant is seeking an Order to confirm her tenancy is on a month to month basis and requests the Landlord comply with the Act and let her live in her home peacefully.

Analysis

I have carefully considered all of the testimony and evidence which included among other things a copy of the December 16, 2010 letter sent to the Tenant by the Landlord's legal counsel, a copy of e-mail correspondence from October 29, 2008, and a copy of the tenancy agreement titled "Length of tenancy" which was initialled by both parties. I note the Landlord did not submit documentary evidence in response to the Tenant's claim.

The evidence supports the parties entered into a fixed term tenancy agreement effective October 1, 2005. The document titled "Length of tenancy" states the following:

"For a fixed length of time: 3(three) years, ending on October 31, 2008 At the end of this fixed length of time the tenancy may continue on a month-to-month basis or for another fixed length of time, subject to the Parties entering into such an agreement prior to October 31, 2008."

I do not accept the Landlord's argument that this tenancy ended October 31, 2008 because they did not enter into another fixed term tenancy agreement; and because he did not institute a rent increase for 2009 or 2010; or because he did not cash the rent cheques from November 1, 2008 through to December 1, 2010 until recently. There is no provision in the Act that states rent must be increased each year to continue a

tenancy agreement, nor is there a provision in the Act that states if a Landlord chooses not to cash rent payments the tenancy is ended.

The tenancy agreement clearly states “At the end of this fixed length of time **the tenancy may continue on a month-to-month basis** (emphasis added by me)”. While there is the provision to enter into another fixed length of time the agreement provides that this is “subject to the Parties entering into such an agreement prior to October 31, 2008”.

The parties did not enter into a new fixed term agreement prior to October 31, 2008, as stipulated by the tenancy agreement; therefore I find there is a tenancy and that it has continued on a month-to-month basis. This tenancy agreement remains in full force and effect on a month-to-month basis.

Based on the aforementioned, I HEREBY ORDER the Landlord to comply with the *Manufactured Home Park Tenancy Act*. The Landlord is further ordered to immediately instruct his legal counsel to cease issuing the Tenant letters instructing her to vacate the property. The Tenant will be at liberty to seek financial compensation if the Landlord or his counsel continues to issue such notices.

The Tenant has been successful with her application, therefore I award recovery of the \$50.00 filing fee.

Conclusion

Based on the aforementioned, I HEREBY ORDER the Landlord to comply with the *Manufactured Home Park Tenancy Act*, pursuant to section 55(3) of the Act.

The Tenant’s decision will be accompanied by a Monetary Order in the amount of \$50.00. This Order must be served on the Landlord and may be filed in Provincial Court and enforced as an Order of that Court.

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 28, 2011.

Residential Tenancy Branch