



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC, DRI

Introduction

This hearing dealt with an application by the Tenant disputing a notice for rent increase by the Landlord and for a monetary order for money owed under the *Manufactured Home Park Tenancy Act* (the "Act").

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

Issue(s) to be Decided

Is the Tenant entitled to the relief he has sought?

Background and Evidence

The testimony and evidence indicates that this tenancy began in February 2008, monthly pad rent began at \$300.00 per month and was increased to \$309.00, effective January 1, 2010.

The Tenant submitted a written statement outlining his claim, payment transaction records, and communication between him and the Landlord.

The Tenant testified that he received the Landlord's notice of an additional rent increase, served on September 15, 2010, for the amount of \$317.51 effective for January 1, 2011.

The Tenant submitted that this, as well as the one in effective for January 1, 2010, amounted to an illegal rent increase. As a result, the Tenant has claimed the amount of \$108.00, as overpaid rent in 2010, in addition to contesting the validity of the latest rent increase.

The Tenant claims that he is overpaying rent in general for the site as compared to other residents and has not paid the increased rent in 2011.

The Landlord submitted into evidence the rent increase notices dated September 29, 2009, September 15, 2010, which is the subject of this dispute, the tenancy agreement, and written submission of defence.

In response the Landlord submitted that the rent increase for 2010 was pursuant to the requirements of the Act and the regulations, and that the increase effective for 2011 was calculated according to the inflation rate, plus 2% and the proportional amount for increased property taxes.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

Only the evidence and testimony relevant to the issues and findings in this matter are described in this Decision.

Sections 34 and 35 of the *Manufactured Home Park Tenancy Act* states:

34 A landlord must not increase rent except in accordance with this Part.

35 (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

- (a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;
- (b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

In the case before me, I find the Landlord did not provide the Tenant with any evidence of the increased property taxes which drove the notice to increase the rent. The fact sheet provided by the Residential Tenancy Branch on rent increases related to passing on increased property taxes or utilities specifically states that the landlord **must** give

the tenant(s) a copy of the most recent tax notice and bills for utility fees with the Notice of Rent Increase. [my emphasis added]

Pursuant to section 5 of the *Manufactured Home Park Tenancy Act* which states:

(1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

I find that the Landlord has failed to give proper notice of a proportional rent increase and the notice is therefore **without force or effect**.

I further find that the rent increase dated September 29, 2009, effective January 1, 2010, raising the Tenant's rent from \$300.00 to \$309.00, in compliance with the Act and regulations is valid and enforceable. I therefore **dismiss** the Tenant's claim for \$108.00 for overpaid rent.

Conclusion

The Tenant's application for dispute resolution contesting the additional rent increase is granted. The notice of rent increase dated September 15, 2010, is with no force or effect. The Tenant has no obligation to pay the requested rent increase.

The Tenant's monetary claim is dismissed.

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

Dated: March 25, 2011.

Residential Tenancy Branch