



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes DRI, CNR, ERP, PSF, RR, FF

Introduction

This matter dealt with an application by the tenant to cancel a Notice to End Tenancy for Unpaid Rent, to dispute an additional rent increase, for an Order for the landlord to make emergency repairs, for an Order for the landlord to provide services or facilities required by law, to allow the tenant to reduce his rent for services or facilities agreed upon but not provided and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was hand delivered to the landlord on March 18, 2011.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issue(s) to be Decided

- Is the tenant entitled to cancel a Notice to End Tenancy for unpaid rent?
- Is the tenant entitled to dispute the additional rent increase?
- Is the tenant entitled to an Order for the landlord to make emergency repairs?
- Is the tenant entitled to an Order for the landlord to provide services or facilities required by law?
- Is the tenant entitled to reduce his rent for services or facilities agreed upon but not provided?

Background and Evidence

Both parties agree that this tenancy started on July 26, 1997. Rent for this Pad started at \$300.00 and has been raised every two years by \$25.00 per month to \$450.00. Rent is due on the 1st day of each month in advance.

The tenant testifies that he has been given another rent increase Notice which he has provided in evidence which is only one page of a seven page document. He states the landlord seeks to increase the rent again to \$475.00. The tenant wishes to dispute this rent increase as the landlord does not maintain the park.

The landlord testifies that he has rising costs each year and his park rules specify that he will increase the rent every two years. The landlord states he is unaware that there are seven pages to a rent increase form.

The landlord testifies that the tenant owed \$125.00 in rent for November, 2010 and has failed to pay any rent for December, 2010, January, February or March, 2011. He states he served the tenant with a 10 Day Notice to End Tenancy on March 10, 2011. This Notice has an effective date of March 21, 2011 due to \$1,925.00 in unpaid rent.

The tenant testifies that he seeks to cancel the 10 Day Notice as he has withheld his rent because the landlord does not maintain the park to a suitable standard. The tenant states the landlord lets the roadway fall into disrepair with large potholes appearing each year which damage the tenants' car.

The tenant seeks an Order for the landlord to carry out emergency repairs to the roadway, to replace a cedar tree the tenant claims was damaged by the landlords weed wacker, to repair the damage to the common grounds caused by another tenant driving his car on the ground, to remove lumber laying on the common ground, to remove an eight foot tall tree stump left in the tenants yard after the landlord cut down the rest of the tree and an order to prevent the landlord and his guests driving over the tenants front yard causing damage to his lawn.

The landlord disputes most of the tenants' claims. The landlord testifies that he repairs the roadways in the park each year after the rainy session. He states he has two truckloads of gravel coming to the park to repair these roads and it should last until December, 2011. The landlord states he did not damage the tenants' cedar tree but suggests it died because of a lack of water. The landlord states the tenant who damaged the common ground was given notice to end his tenancy and has now left the park. The landlord testifies that he will be cleaning up the common area and the lumber will be removed. The landlord states he is willing to cut the tree stump to a reasonable height, but the tree had to be removed because it infringed on other roofs leaving debris.

The tenant seeks an Order for the landlord to repair the roadways and to maintain them regularly as the roads are a service and form part of his tenancy agreement with the landlord. The tenant also seeks an Order for the landlord to take preventative action against non tenants using the parks garbage facilities and states his rent should be lowered as he rarely uses the garbage facilities himself.

The landlord states he has to pay for the garbage dumpsters even if the tenant does not use them as they are in place for his and all tenants use. The landlord states he has been unable to prevent non-tenants using these facilities as he has never caught anyone dumping their garbage there.

The tenant seeks a rent reduction of \$100.00 to \$350.00 per month as he claims the landlord does not maintain the park to a reasonable standard. The tenant has sent in a computer disc with photographs of the park and states these show the potholes in the road, the destroyed cedar tree, damage to the common area, lumber in the common area, the walnut tree stump and pictures of the damage to the tenants' front yard.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. With regard to the tenants application to dispute the additional rent increase. The Notice provided to notify the tenant of this rent increase is not a valid Notice as specified by the *Manufactured Home Park Tenancy Act (Act)* section 35(3). A valid form would contain seven

pages whereas the form the tenant received only contained the first page. Therefore, it is my decision that this form is not valid and the tenants' application to dispute this Notice is upheld.

With regard to the tenants claim to cancel the Notice to End Tenancy; As the tenant does not dispute that he owes rent to the landlord to the sum of \$1,925.00; I refer the tenant to s. 20 of the *Act* which states a tenant must pay rent when it is due under the tenancy agreement whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of rent. The tenant argues that he has had illegal rent increases imposed upon him every two years since 1997 and states he withheld his rent because the landlord allegedly failed to maintain the park. The tenant has provided only one rent increase Notice for this year and failed to show that the other increases were illegal or not on the approved form and therefore I find he is not entitled to withhold rent for this reason. The tenant is also not entitled to withhold his rent because he feels the landlord has not complied with the *Act* with regard to maintenance of the park. Therefore, I find the tenants' application to cancel the 10 Day Notice is dismissed and the Notice remains in force and effect.

With regard to the tenants claim for an Order for emergency repairs under s. 27(1) (b) of the *Act* which refers to emergency repairs. I find although the tenant provided a computer disc with his evidence of the repairs required I am unable to see the pictures on this disc because the tenant did not provide any means for me to access the pictures. In light of this the landlord does not dispute that there are potholes in the road but states he has to wait to repair them due to weather conditions. As I have insufficient evidence from the tenant to meet the burden of proof in this matter regarding the potholes or other maintenance of the park and insufficient evidence to support the tenants claim for emergency repairs I dismiss this section of his application with leave to reapply.

I further find as there is insufficient evidence to support the tenants' application for repairs I must also dismiss his application for an Order for the landlord to provide services or facilities required by law and his application to reduce his rent for repairs, services or facilities agreed upon but not provided, also with leave to reapply.

I would caution the landlord that he must ensure the tenants' rights are protected with regard to the landlords' right of entry on to the tenants' site and this also includes the landlord or his guests driving over the tenants' lawn area if this is designated as his site. I further caution the landlord to ensure any potholes are filled in regularly to protect the tenants' right to access to his site. I further caution the landlord to take necessary steps to prevent non tenants from accessing the garbage dumpsters designated to the tenants.

As the tenant has been largely unsuccessful with his claim he is entitled to recover half his filing fee from the landlord of **\$25.00** pursuant to section 65(1) of the *Act* and may deduct this amount from his next rent payment when it is due.

Conclusion

The tenants' application to cancel the rent increase is upheld.

The tenants' application to cancel the 10 Day Notice to End Tenancy is dismissed and the Notice will remain in force and effect.

The remainder of the tenants' application is dismissed with leave to reapply.

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: April 05, 2011.

Residential Tenancy Branch