



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, OLC

Introduction

This hearing was convened by way of conference call on May 4, 2011 to deal with the tenant's application for an order cancelling a notice to end tenancy for unpaid rent; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and for an order that the landlord comply with the *Act*, regulation or tenancy agreement. The hearing did not conclude on May 4, 2011 and was continued on May 31, 2011. At the outset of the hearing on May 4, 2011 the parties advised that they also had a hearing scheduled on May 5, 2011 and with the consent of the parties, the two hearings have been joined and this is the resulting Decision of both applications. Both applications were filed by the tenant and both claim the same relief. The hearing on May 5, 2011 is cancelled.

The tenant and an agent for the landlord attended the conference call hearing who each called a witness. The parties and the witnesses all gave affirmed testimony, and the parties were given the opportunity to cross examine each other and their witnesses on the testimony and evidence provided. All evidence and testimony has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling a notice to end tenancy for unpaid rent or utilities on Unit #3?

Is the tenant entitled to an order cancelling a notice to end tenancy for unpaid rent or utilities on Unit #43?

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order that the landlord comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

The landlord's agent testified that a previous dispute resolution hearing was conducted on December 20, 2010 wherein the landlord was ordered to pay the tenant \$1,820.00 for each of the two units. She further testified that from January, 2008 to April 2, 2009, the arrears for unit #43 have accumulated to \$1,490.00. On December 2, 2010 the tenant made a partial payment of \$325.00, leaving a balance from the award of \$105.00 plus a \$25.00 late fee outstanding. No arrears built up from May, 2009 to November, 2010. She stated that the tenant has not responded to letters or notices given by the landlord. A number of notices to end the tenancy for unpaid rent have been issued.

The tenant's father originally owned one of the manufactured homes but passed away at the beginning of 2010. She stated that the tenant has rented Unit #3 to his son without the permission of the park management, contrary to the Rules and Regulations. The tenant is habitually late with the rent.

The landlord's agent further testified that they hired the services of an accountant to provide information on the exact amount of rent that was paid to the landlord. The landlord used that document to prepare an accounting of the rent charged for Unit #43, late fees, payments made, and deducts the \$1,820.00 as per the December 20, 2010 Decision. It shows that for Unit #43, the tenant owed \$947.30 up to December 31, 2009 and an additional \$210 to December 31, 2010. It also shows that the tenant has made no rent payments on that unit up to May 1, 2011, and as at May 31, 2011 a total of \$2,707.30 is outstanding, including late fees. The landlord's agent testified that Unit #3 holds a credit balance of \$5.00 up to the end of April, 2011 when the \$1,820.00 award is applied.

On April 4, 2011 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the tenant's door on April 4, 2011, a copy of which was provided in advance of the hearing. The notice is dated April 4, 2011, states that the tenant has failed to pay rent in the amount of \$360.00 that was due on April 1, 2011, and contains an expected date of vacancy of April 14, 2011. The notice is for Unit #3.

With respect to Unit #43, the landlord also served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on April 4, 2011 by posting it to the door of the rental unit on April 4, 2011. That notice is dated April 4, 2011, states that the tenant has failed to pay rent in the amount of \$310.90 and contains an expected date of vacancy of April 14, 2011. She further stated that the amount is an error and should read \$310.00.

The tenant testified that the December 20, 2010 hearing resulted in a Decision setting the rent at \$275.00 per month for each unit. He stated that \$340.00 was owed as at

December 20, 2010. On January 6, 2011 he made a request to the park management to deliver the amount of \$1,820.00 by certified cheque by January 14, 2011.

On January 24, 2011 another hearing was conducted wherein the Dispute Resolution Officer denied the landlord's application for an Order of Possession because the landlord had not paid the \$3,640.00 to the tenant as ordered in December, 2010, and the tenant was therefore entitled to deduct that amount from rent due to the landlord.

He further testified that as at December 20, 2010 \$340.00 was owed for Unit #3 and \$105.00 for Unit #43.

Analysis

The evidence of the parties is very unclear with respect to the amounts that may or may not be owing to the landlord for unpaid rent. I have examined the evidence and find that the audit conducted by the accountant is the most reliable evidence, but it only contains amounts paid by the tenant commencing with February 1, 2008 and it contains no starting balance. Also, it states that it is for Unit #43 but at least one of those payments states that it's for both units, but does not separate how much of that \$940.00 payment is for Unit #3 and how much is for Unit #43.

I have also compared the records for Unit #43 made by the accountant to the records made by the landlord and I find that the payment documents do not match. The landlord's document dated May 12, 2011 shows that the tenant paid \$3,562.70 from May, 2009 to December, 2009 and the accountant's document shows the tenant paid \$3,062.70 for that period.

The *Residential Tenancy Act* states that a tenant may dispute a notice to end a tenancy by filing the dispute within 5 days of receipt of the notice. I find that the notices for both units were served on April 4, 2011 by posting them to the doors of the rental units, and are deemed to have been served on April 7, 2011, which is 3 days after posting them. The tenant then had 5 days from April 7, 2011 to dispute the notices, and the tenant's applications were filed on April 7, 2011. Therefore, I find that the tenant has disputed the notices within the time set out in the *Act*.

The landlord's agent testified that Unit #3 holds a credit balance of \$5.00 up to the end of April, 2011 when the \$1,820.00 award is applied. Therefore, I find that the landlord is not entitled to an Order of Possession for that unit.

With respect to Unit #43, I find that the landlord's testimony is too inconsistent to determine what exactly the arrears amount to.

I have also reviewed the tenancy agreement and find that the tenant is required to pay an additional \$25.00 for late fees per month if the rent is not paid by the 1st day of each month. The document of the Accountant shows payments made and the dates, but it does not show whether a payment made at the end of a month is for that month or the following month. Therefore, I am not able to determine how many months the tenant has been late with the rent or how much in late fees the tenant may owe.

The tenant's application also includes an application for a monetary order in the amount of \$360.00 for file 769973 (Unit #3) and \$615.00 for file 769974 (Unit #43). The tenant did not lead any evidence with respect to money owed or compensation for damage or loss under the Act, regulation or tenancy agreement. I have read the tenant's applications, and in the details sections, it states that the request for the monetary order is for harassment on false claims of rents due to the landlord. I find that the tenant has failed to establish that the tenant has suffered any hardship with respect to notices to end tenancy, or that the landlord did not have sufficient reason to issue the notices.

The tenant has also applied for an order that the landlord comply with the Act, regulation or tenancy agreement, but did not lead any evidence to support that claim.

Conclusion

For the reasons set out above, the tenant's application for an order cancelling a notice to end tenancy for unpaid rent or utilities for Unit #3 and File No. 769973 is hereby allowed and the tenancy will continue.

The tenant's application for an order cancelling a notice to end tenancy for unpaid rent or utilities for Unit #43 and File No. 769974 is hereby allowed and the tenancy will continue.

The tenant's applications for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement is hereby dismissed without leave to reapply with respect to both units and Files 769973 and 769974.

The tenant's applications for an order that the landlord comply with the Act, regulation or tenancy agreement is hereby dismissed without leave to reapply with respect to both units and Files 769973 and 769974.

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: June 07, 2011.

Residential Tenancy Branch