



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR MNR FF
CNR

Introduction

This hearing dealt with cross applications under the *Manufactured Home Park Tenancy Act* (the Act) or Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed seeking an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, and to recover the cost of the filing fee from the Tenants.

The Tenant filed seeking an Order to cancel a Notice of Unpaid Rent.

Both parties attended the hearing and were given full opportunity to present all relevant evidence and sworn testimony in respect to their claims and to make relevant prior submission to the hearing and fully participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issues(s) to be Decided

Should the landlord's Notice to End be set aside or cancelled?
Is the landlord entitled to an Order of Possession?
Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The parties brought forth a number of issues previously and issues currently between them. The *relevant* and undisputed evidence in this matter is that the tenancy began on July 01, 2009 by way of a written tenancy between the numbered entity party. I do not have benefit of the tenancy agreement, but there is agreement that the rent payable

each month is \$315 and that the agreement is absent of specific information of how, to whom, and by what form of currency the rent is to be paid.

The tenant provided the Notice to End for Unpaid Rent, a bank draft receipt and accompanying particulars dated September 30, 2011, and registered mail receipt, in support of rent paid for October 2011, to the name of the landlord's manager / agent. The landlord provided a copy of the Notice to End for Unpaid Rent.

The parties agree that for the majority of the tenancy period (but in the least the recent eight (8) months) the tenant has paid their rent in cash to the manager / agent. For October 2011 the tenant determined to pay the rent with a bank draft to the name of the manager / agent instead of the usual payment of cash. The manager/ agent refused to accept the bank draft in their name and returned the tenant who then mailed it by registered mail to the manager. The manager/ agent testified he holds the subject bank draft. The manager/agent testified that it would not be proper for them to accept a bank draft in their name on behalf of the owner, or to cash the bank draft and apply the resulting cash to the tenant's payable rent. On this basis the landlord (manager / agent) determined the tenant did not pay the rent and on October 06, 2011 they issued the tenant a 10 Day Notice to End Tenancy for Unpaid Rent. The tenant testified that they paid the rent and the landlord would not accept it.

The tenant and landlord were provided opportunity to discuss and resolve their dispute. However, the tenant confirmed their request to set aside the Notice to End, and the Landlord confirmed he is seeking an Order of Possession, a Monetary Order for unpaid rent, and to recover the cost of the filing fee.

Analysis

All of the relevant testimony and relevant documentary evidence was carefully considered. The Act states that in a tenancy the tenant is responsible to pay the rent. Unless agreed by the parties, the rent is payable by means of legal tender or assured payment, and by a method the parties agree upon for payment.

I find that for the purposes of this matter, the manager / agent in attendance for this hearing is by definition within the Residential Tenancy Act, the landlord.

In the absence of evidence or agreement as to the payment of rent or the method of payment, I find that the tenant paid the rent to the landlord by means of legal tender / assured payment. As a result, I find the tenant did pay the rent for October 2011. Effectively, I find that the landlord did not issue the tenant a *valid* Notice to End Tenancy

for Unpaid Rent, and that the Notice to End **is cancelled** and is of no effect. The landlord is at liberty to issue a *valid* Notice to end for *valid* reasons.

Conclusion

I hereby find in favour of the tenant's application and have **cancelled** the Notice to End for Unpaid rent dated October 06, 2011, and the tenancy continues.

The landlord's application is effectively **dismissed**, without 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: November 07, 2011

Dispute Resolution Officer