



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, OPR, MNR, MNDC, RR, FF

Introduction

This hearing was convened in response to an application by the tenant **and** an application by the Landlord.

The tenant sought Orders under the *Manufactured Home Park Tenancy Act* (the Act),

- to cancel a 10 Day Notice for Unpaid Rent (Notice to End) given November 22, 2011,
- money owed in compensation for damage or loss,
- to allow tenant to reduce rent for repairs, services or facilities agreed upon but not provided .

The landlord sought:

- an Order of Possession due to unpaid rent,
- a Monetary Order to recover rental arrears / unpaid rent,
- money owed in compensation for damage or loss

Both parties claimed their respective filing fee.

Both parties appeared in the conference call hearing and fully participated with their submissions and testimony, with assistance of an interpreter for the landlord.

The tenant advised they are still residing on the rental pad.

Issue(s) to be Decided

- Is the Notice to End Tenancy for Unpaid Rent valid?
- Should the Notice to End be cancelled?
- Is the landlord entitled to an Order of Possession?
- Is the landlord entitled to the monetary amounts claimed?
- Is the tenant entitled to the monetary amounts claimed?

- Should the tenant be allowed to reduce rent?

Background and Evidence

The tenancy began on March 1, 2005. It is undisputed that monthly pad rent payable is \$565.81 per month and is due in advance on the first day of each month.

On November 22, 2011 the landlord gave the tenant a Notice to End Tenancy for Unpaid Rent stating the tenant owed \$4526.48. The tenant testified they disagree with the landlord's Notice to End. They are of the understanding that a previous Decision of the Director dated October 04, 2011 (October Decision) cancelled all arrears of rent – including those arrears of rent that the tenant acknowledged owing from April 2011 through October 2011 in the sum of \$3960.67. The tenant and landlord agree that the tenant paid the rent for November 2011 and was given a receipt. The tenant also disputes the Notice to End on the basis that the amount stated on the Notice to End tenancy is incorrect and therefore refused to pay it. The tenant also applies for a monetary order, that if accepted, the tenant claims the landlord owes them money.

The tenant's claim on application for a monetary order is based on their personal understanding of the terms of a purported verbal employment agreement with the landlord. The tenant testified that a verbal employment agreement with the landlord was for certain labour respecting the park property, "in exchange for pad rent". However, the tenant's claim on application is advanced with submissions of calculations for amounts for labour, hours worked for two individuals, and an assumed minimum hourly rate. The tenant claims that after all rent arrears are factored, the landlord would still owe them \$2577.50. The tenant seeks the result of their accounting through a reduction in past rent, plus a monetary order. The landlord's view is in complete contrast with the tenant's view of a verbal employment agreement. The landlord has repeatedly only acknowledged that he employed the tenant on a specific work basis for pool cleaning and specific short-term jobs around the home park. Neither party claims to a third party witness to an agreement. The tenant submitted an abundance of documents in support of work they performed around the home park. The landlord testified that if the tenant performed the scope and amount of work which they claim, it was not authorized nor part of an agreement with the landlord.

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The landlord testified that the Notice to End was issued two weeks after November's rent was paid, however the amount on the Notice to End does not acknowledge payment of November rent. The landlord acknowledged that the amount due on the date of the Notice to End (November 22, 2011) should have been stated as \$3960.67.

The landlord's total monetary claim on application of \$5272.29 included assumed unpaid rent for December 2011 (\$565.81) and nine (9) late fees of \$20 each (\$180) as permitted by the tenancy agreement.

Neither party spoke to the tenant's application to cancel a Notice to End *for Cause*.

Analysis

I find that the Decision of the Director dated October 04, 2011 (October Decision) cancelled the landlord's previous Notice to End for Unpaid Rent because the landlord's Notice had calculation irregularities which rendered it invalid. I note that the October Decision only states that the tenants and landlord acknowledged they had an agreement the tenant would perform work for the landlord. The parties differed over the terms of that arrangement, but the tenants stated an agreement spanned July 2010 to March 2011; and, they did not pay any rent thereafter, from April 01, 2011 to October 2011, and that they owe rent for those months.

In this hearing the tenant acknowledges that the outstanding arrears for this period of time are in the sum of \$3960.67. However, the tenant claims that after the October 2011 hearing they consulted an individual of the Branch – being told the Decision stated they no longer owed arrears of rent to the landlord. The tenant testified that as a result, they paid only the rent for November 2011. **I find** the Decision dated October 04, 2011 does not confirm the tenant's arrears of rent were cancelled.

I find that the landlord has clearly acknowledged that the only amount of rent in arrears was, and remains unpaid rent for the seven (7) months spanning April to October 2011 in the amount of \$3960.67. Therefore, the Notice to End dated November 22, 2011, stating the tenants owe \$4526.48 is incorrect. A Notice to End for Unpaid Rent should only state the actual amount owing, or it begs to be disputed. As a result, **I find** the Notice to End invalid and hereby Order the Landlord's notice dated November 22, 2011 **is cancelled** and is of no effect. This is not to say the tenant's arrears are also cancelled.

As discussed with the parties, the tenant has come perilously close to losing their tenancy, and the landlord retains the right to give the tenant a new *valid* Notice to End for all *actual* unpaid rent. If the tenant then does not pay the amount within the required five (5) days, on application the landlord may be granted an Order of Possession and a monetary order for the unpaid rent. If the rent for December has not been paid, the landlord may include all unpaid rent payable on any new valid Notice to End. As I have

cancelled the landlord's Notice to End, **I dismiss** the landlord's associated monetary claims related to unpaid rent, with leave to reapply.

I find the tenant's testimony that their work was to be, "for pad rent" to be dramatically different to their application - based on other factors. **I find** the tenant's claim for a reduction of rent, and monetary compensation in the amount of \$2577.50 is not rooted in evidence that the parties agreed on the compensation formula on which the tenants base their monetary claim. The burden of proving one's claim is on the applicant (in this case, the tenant), and **I find** the tenant has not met their burden. As a result, **I dismiss** the tenant's claims for a reduction in rent and for a monetary order, without leave to reapply.

As the tenant was partly successful in their application, they are entitled to recover \$50 for their filing fee.

Conclusion

The tenant's application to *cancel* the Notice to End tenancy for unpaid rent **is granted**, with the effect that the tenancy continues, and the landlord's application for an Order of Possession related to this Notice to End is effectively **dismissed**.

The tenant's application for a monetary order and a reduction in rent is **dismissed**, without leave to reapply.

The tenant may deduct **\$50** from their next month's rent.

The landlord's application for a monetary order for unpaid rent 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: December 12, 2011.

Residential Tenancy Branch