



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, MT

Introduction

This hearing dealt with applications from the landlord and the tenant pursuant to the *Manufactured Home Park Tenancy Act* (the *Act*). The landlord applied for an Order of Possession for unpaid rent and for the tenant's breach of an agreement with the landlord, pursuant to section 48. The tenant applied for more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy (the 10 Day Notice) pursuant to section 59.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenant testified that she did not serve the landlord with a copy of her dispute resolution hearing package because she did not know his address. The landlord confirmed that he was unaware that the tenant had applied for dispute resolution. I dismissed the tenant's application for dispute resolution with leave to reapply, noting that the only item identified in the tenant's application was her request to be granted more time to apply for the cancellation of the landlord's 10 Day Notice.

The tenant confirmed that she received a copy of the landlord's 10 Day Notice posted on her door by the landlord on January 25, 2012. The tenant also confirmed that she received a copy of the landlord's original and amended applications for dispute resolution posted on her door by the landlord on February 14, 2012. I am satisfied that the landlord served these documents in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent or for a breach of the tenant's agreement with the landlord?

Background and Evidence

The landlord entered into a tenancy agreement with the owner of this property, the F Trailer Park (the FTP), whereby he placed his manufactured home on a lot in the landlord's Trailer Park in exchange for a monthly pad rental.

The landlord entered into a written Manufactured Home Lease with Option to Purchase (the Agreement) in which the tenant was to make a monthly payment of \$600.00 for the use of the landlord's 1973 manufactured home commencing on August 1, 2010 until January 1, 2014, when the final payment would be \$400.00. Although the landlord entered into written evidence an unsigned and undated copy of the Agreement, both parties testified that they did sign and date a copy of this Agreement. I accept that a signed and dated Agreement exists. They also agreed that the Agreement was scheduled to end on January 1, 2014, instead of January 1, 2013, the date identified in the copy of the Agreement entered into written evidence by the landlord. This Agreement also required the tenant to pay the landlord the monthly pad rental (i.e., \$225.00 at the time they signed the Agreement) on the first of each month. According to this Agreement, the tenant was also to pay all utilities and the municipal taxes for this manufactured home. According to the Option to Purchase that formed part of the Agreement, the monthly lease payments were to be credited to the July 20, 2010 purchase price of \$30,000.00. The parties agreed that the tenant paid a \$5,000.00 damage deposit when she entered into this Agreement, a deposit described by the landlord at the hearing as her "downpayment." If the tenant made all payments during the course of this Agreement, the tenant would have paid the entire \$30,000.00 purchase price and would have purchased the manufactured home by being credited with her monthly payments towards the purchase price.

In his 10 Day Notice, the landlord identified \$4,607.00 in unpaid rent due as of January 1, 2012. The landlord testified that he did not receive any portion of this amount owing and sought an end to this tenancy for the tenant's failure to pay her rent and to honour the terms of the Agreement.

The landlord also submitted written evidence of a January 25, 2012 letter to the tenant that he attached to her door with the 10 Day Notice. That letter outlined the details of the \$4,607.00 he claimed was owing and which he asked her to pay in full within 10 days. He listed the requested \$4,607.00 for the following items:

Item	Amount
Unpaid Lot Rent (Pad Rental) @ \$225.00 per month (dating from the start of their Agreement)	\$2,450.00
Unpaid Rent for January 2012	600.00
Insurance Payments from August 2010 – Jan. 2012 @ \$70.00 per month	1,260.00
2011 Property Taxes	297.00

Total Amount Outstanding	\$4,607.00
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In his letter, he added that if the tenant paid this amount within 10 days, she would have to pay him a total of \$895.00 each month starting in February 2012 which was to include \$600.00 in rent, \$225.00 for her pad rental and \$70.00 for insurance.

The tenant testified that she had receipts (none of which she entered into written evidence for this hearing) that demonstrated that she had been paying her pad rental to the owner of the property, the FTP, throughout this tenancy, and that she was current in her payments for use of the trailer. She also disputed whether she was responsible for paying insurance for the trailer.

Analysis

My consideration of the landlord's claim that the tenant has not followed the terms of their Agreement and that there is rent outstanding, as well as the tenant's claim that she has been paying in accordance with the terms of their Agreement, is hampered by the failure of the parties to provide me with a signed and dated copy of the Agreement. However, since there was substantive agreement between the parties that they did sign the Agreement and that this governed the terms of their relationship, I have attempted to the extent possible to use the copy of the Agreement provided to me as the basis for considering the landlord's application.

I first note that the landlord's own written evidence contradicts the landlord's claim in his 10 Day Notice that the tenant owed \$4,607.00 in unpaid rent as of January 1, 2012. Of the \$4,607.00 in unpaid rent identified in the landlord's 10 Day Notice, \$1,260.00 was for insurance payments which the tenant claimed she was not responsible for under the terms of the Agreement. Another \$297.00 of this amount was actually for the tenant's alleged failure to pay her property taxes, again a different issue than the unpaid rent identified in the landlord's 10 Day Notice.

The landlord also entered into written evidence anonymized copies of statements from his credit union. Unfortunately, he did such an effective job of anonymizing these statements that I can give little weight to this evidence in his Statement of Accounts. This evidence merely confirmed that certain deposits (from sources unknown) were placed in his credit union account on certain dates. He also provided a copy of what would appear to be an account statement from the owner of the property, the FTP, relating to the payment of pad rentals for this location in the Trailer Park. There is no letterhead on this statement and no name or signature of the person who prepared this statement. No one from the FTP participated in this hearing to verify that these figures were indeed prepared by the owner and that they were accurate. Even if I were to

accept such questionable evidence, this statement confirms the tenant's claim that she has been paying pad rental directly to the owner of the property and not to the landlord. Under these circumstances and without confirmed evidence from either of the parties with respect to payments that have been made or received by the owner of the property, I find that a major portion of the landlord's claim of unpaid rent remains in question.

Finally, I note that the terms of the Agreement specifically state that "any difference or dispute... in connection with any matter arising" out of this Agreement "shall be settled by arbitration pursuant to the provisions of the Arbitration Act of the Province of British Columbia by one arbitrator, if the parties agree in writing upon one, otherwise it shall be determined by the award of three arbitrators or a majority of them...and the decision of the said arbitrators or the majority of them shall be final and binding upon the parties hereto." It remains possible that the final and binding recourse to arbitration that the parties included in their Agreement does not preclude consideration of this matter under the *Manufactured Home Park Tenancy Act* or the *Residential Tenancy Act*. However, the amount of the damage deposit required under the Agreement (i.e., \$5,000.00)and the landlord's description of that deposit as a "downpayment" seem consistent with the other provisions of this Agreement which do not give this Agreement the appearance of a tenancy between the parties. Based on the evidence presented, it also appears to me that at least some of the terms of the Agreement are in dispute (e.g., insurance) and may have been modified over time. I find that the landlord has failed to provide a signed copy of the Agreement containing the final agreed terms of that Agreement and that both parties failed to provide adequate evidence of payments that have been made to the landlord or to the owner of the property.

Under these circumstances, I dismiss the landlord's application to end this tenancy on the basis of his 10 Day Notice and his claim that the tenant has not abided by the terms of their Agreement. I do so because of the deficiencies and inconsistencies in his evidence.

Conclusion

I dismiss both applications for dispute resolution with leave to reapply. Without proper and complete information regarding the parties' Agreement and the status of the pad rental payments, it remains unclear as to whether the proper course of action for the landlord is by way of dispute resolution through either the *Manufactured Home Park Tenancy Act* or the *Residential Tenancy Act*. It is also possible that the recourse available to the landlord is by way of the mechanism apparently agreed to by the parties when they signed their Agreement. I would encourage both parties to ensure that they provide full and complete written evidence regarding this matter if either party submits a new application for dispute resolution to the Residential Tenancy Branch in the future.

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

Dated: March 2, 2012

Residential Tenancy Branch