



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – DRI, CNE, CNC, CNR, OLC, RP, PSF, LRE, RR, FF, O

For the landlord - OPR

Introduction

This hearing was convened by way of conference call in repose to both parties' applications for Dispute Resolution. The tenants have applied to dispute an additional rent increase; to cancel a Notice to End Tenancy because the tenants employment with the landlord has ended; to cancel a Notice to End Tenancy for cause; to cancel a Notice to End Tenancy for unpaid rent; for an Order for the landlord to comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement; for an Order for the landlord to make repairs to the unit, site or property; for an Order for the landlord to provide services or facilities required by law; to suspend or set conditions on the landlords right to enter the rental unit; to allow a tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlords for the cost of this application. The landlords have applied for an Order of Possession for unpaid rent.

One of the tenants and landlords and their agent attended the conference call hearing. The parties present were given the opportunity to cross exam each other on their evidence. The landlords and tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

At the outset of the hearing it was determined that the landlord has not served the tenant with a Notice to End Tenancy based on the tenants employment with the landlord having ended therefore the tenant attending withdraws this section of their application.

RTB Rules of Procedure 2.3 states that “if in the course of a dispute resolution proceeding, the dispute resolution officer determines that it is appropriate to do so, the Dispute Resolution Officer may dismiss unrelated disputes contained in a single application with or without leave to reapply.” In this regard I find the tenants claim for orders concerning the landlords alleged non compliance of the *Act*; for repairs to the unit, site or property; to provide services or facilities required by law; to suspend or set conditions on the landlords right to enter the rental unit; to allow a tenant to reduce rent for repairs, services or facilities agreed upon but not provided are unrelated to the main issues therefore these sections of the tenants claim are dismissed with leave to reapply.

Issue(s) to be Decided

- Are the tenants entitled to dispute an additional rent increase?
- Are the tenants entitled to have the One Month Notice to End Tenancy cancelled?
- Are the tenants entitled to have the 10 Day Notice to End Tenancy cancelled?
- Are the landlords entitled to an Order of Possession due to unpaid rent?

Background and Evidence

Both parties agree that this month to month tenancy started on January 02, 1997.

The landlord testifies that he purchased this Mobile Home Park on December 16, 2011. The landlord acknowledges that this tenant worked for the previous landlord as a caretaker for the park in lieu of rent and states as they did not require the tenant to continue in this role they terminated their employment by telephone on December 16,

2011. The landlord states that during this telephone call the tenant informed the landlord that she would start paying rent of \$220.00 per month effective from January 01, 2012. The landlord states the tenant did not pay any rent for January, February or March, 2012 and three separate 10 Day Notices for each of these months was posted to the tenants door on March 26, 2012. These Notices stated that the tenants owed rent of \$220.00 for January, February and March, 2012. The tenants had five days to pay the outstanding rent or dispute the Notices or the notices would be effective from April 05, 2012 and the tenants must vacate the site.

The landlord states the tenants were informed by letter that the site had been purchased and they were the new owners and landlord. The landlord states this letter was sent to the tenants on January 06, 2012. The landlord states he had received a signed copy of a tenancy agreement for these tenants dated January 02, 1997 from the previous owner of the site. This tenancy agreement detailed the rent due of \$150.00 per month. The landlord states he relied on information from the tenant that she would pay a monthly rent of \$220.00.

The landlord states the tenant did pay \$12.00 on March 29, 2012 and \$4.00 on April 02, 2012. These payments were accepted for use and occupancy only and did not reinstate the tenancy. The tenants were informed of this in writing when the landlord sent the tenants documentation for this hearing on April 04, 2012.

The landlord seeks an Order of Possession effective within 30 days.

The tenant disputes the landlords' claims. The tenant states they were not informed until January 06, 2012 that the mobile home park had been purchased by new owners. The tenant states she did receive a telephone call on December 16, 2011 from this landlord when he fired the tenants from their employment as caretaker. The tenant states at that time she did not know if this was the new owner and landlord of the park. The tenant denies informing this landlord that she would pay a monthly rent of \$220.00.

The tenant states shortly after commencing their tenancy she was offered the caretaker position in lieu of rent. The tenant states she did sign a tenancy agreement in 1997 but was never given a copy of this by the previous landlord so was not able to recall how much rent should be paid. The tenant states she was never given a rent increase as she worked for the previous landlord. The tenant states that the other tenants residing in the park have been given a rent increase from the new landlords but the landlord has not given them a rent increase so they had no idea what rent they should be paying starting in January, 2012.

The tenant states she obtained information from a real estate agent involved with the previous landlord when he wanted to sell the park. In this information it declares an annual statement of expenses dated June 2011. In this statement it shows that the tenants provided lawn care and grounds keeping in lieu of rent of \$1,200.00 per year. From this information the tenant based her assumption that the previous landlord had set their rent at \$100.00 per month or \$1,200.00 per year. The tenant states this landlord as the new owner would have received this information when he purchased the park and would therefore have known what the previous landlord had declared as their annual rent about in lieu of caretaker duties.

The tenant states that in October 2009 a hearing took place between the landlord at the time and the tenants regarding the failure of the septic system for their site. In the decision rendered at that time it acknowledges that the tenants do not pay rent for their site in exchange for doing caretaking and grounds keeping in the park. The landlord at that time was ordered to repair or replace the septic system and the tenants were given leave to reapply for economic compensation in accordance with the *Act*.

The landlord at that time did not fully comply with that Order made on October 02, 2009 and the tenants filed another application seeking compensation. It was found that the landlord had restricted a service, namely the tenants' ability to do laundry in their home, due to continuing problems with the septic system for their site and the Dispute

Resolution Officer awarded the tenants compensation based on the weekly expenses to do their laundry of \$24.00 per week or \$96.00 per month for 15 weeks.

The tenant states the previous landlord did not repair the septic system and continued to pay the tenants \$96.00 per week in compensation for them having to do their laundry elsewhere. The tenant states based on this figure of \$96.00 and the figure provided in the statement for prospective purchasers of the mobile home park in which the previous landlord states the tenants rent is \$1,200.00 per year, the tenant states they gave the landlord \$12.00 for the rent for January, February and March and \$4.00 for rent for April after they received the 10 Day Notices from the landlord on March 26, 2012. The tenant states that therefore as rent was \$100.00 per month (according to the information from the previous landlord) and the landlord had to pay the tenants \$96.00 per month in compensation the rent owed was \$4.00 per month. The tenant submits that based on this information the tenant do not owe rent to this landlord and seeks to have the 10 Day Notices cancelled.

The tenant states that the landlord served them with a One Month Notice to End Tenancy on March 28, 2012. This Notice gave the following reasons to end the tenancy:

- 1) The tenant is repeatedly late paying rent.
- 2) The tenant or a person permitted on the residential property by the tenant has
 - (i) Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - (ii) Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - (iii) Put the landlord's property at significant risk;
- 3) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has or is likely to:

- (i) Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
 - (ii) Jeopardize a lawful right or interest of another occupant or the landlord.
- 4) The tenant has caused extraordinary damage to the unit/site or property/park
 - 5) The tenant knowingly gave false information to prospective tenants or purchaser or the rental unit/site or property/park.

The landlord states the tenants have been repeatedly late paying their rent; the tenants have refused the landlord entry to their site to serve notices and the landlord perceived this as a threat because the tenant said “don’t you dare come on our site”. The landlord states the tenants have been stirring up trouble with other tenants. The landlord states the tenants have driven their car across the septic field therefore causing damage to the field. The landlord states when he was a prospective purchaser of the park the tenant gave him false information about a ‘Geo Tec survey’ with pad four. The landlord states the tenants have driven unlicensed snow mobiles around the park and he has received complaints from other tenants and the tenants have caused extraordinary damage to their site by nailing up wooden sheds.

The tenant denies all reasons given by the landlord on this notice. The tenant states they have not been repeatedly late paying their rent as they were not informed that a new owner had purchased the park until January 06, 2012 and then were not informed how much rent they should pay after their employment arrangement was terminated by the new landlord. The tenant states they have not disturbed or interfered with any other occupants of the park or the landlord; they have not jeopardized the health, safety or lawful right of another occupant or the landlord and have not put the landlords property at any risk. The tenant states thier snow mobiles are not driven around the park but are driven onto an adjacent property from their yard, no one is at risk and no one has been harmed. The tenant states they have not driven their car over the septic field and this landlord does not even know where the septic field is on their site. The tenant disputes

the landlords claims that they have engaged in any illegal activity that would adversely affect the quiet enjoyment, security, safety or physical well being of another occupant or the landlord and they have not jeopardized a lawful right or interest of another occupant or the landlord. The tenant states they have not caused any extraordinary damage to the site or park and have never given any information false or otherwise to a prospective tenant or purchaser.

The landlord states any problems with the septic field are not his responsibility as he was not informed of them by the previous landlord or these tenants and should not be held responsible for any previous Orders or Decisions made concerning the septic field or compensation due to these tenants.

The tenants question how much rent they should pay from May 01, 2012 as they do not want to risk receiving another 10 Day Notice from the landlord.

Analysis

I have considered the documentary evidence and the verbal testimony before me. With regards to the tenants application to dispute an additional rent increase. The tenant agrees that they have not, at this time, been given a rent increase. Therefore as no rent increase has been applied to this tenancy there is nothing for the tenant to dispute and this section of the tenants claim is dismissed with leave to reapply in the event the landlord does apply an unlawful rent increase.

With regard to the landlords application for an Order of Possession due to unpaid rent; Section 26 of the *Act* states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The landlord argues that they tenant informed the landlord that she would start paying rent of \$220.00 per month and the landlord based the figures for unpaid rent on the 10 Day Notices on this amount. The landlord has also provided a copy of the tenancy agreement in place between the previous landlord and these tenants which show the rent was agreed at \$150.00. The tenant argues that she never received a copy of the tenancy agreement and the previous landlords account for prospective purchasers show the rent for their site as \$1,200.00 per year making the rent \$100.00 per month. The tenant argues as they have not paid rent during their tenancy due to an employment arrangement with the previous landlord she was not able to determine exactly what their rent was when this landlord terminated their employment. The tenant also argues at a previous decision allowed her compensation for the loss of her laundry facilities or \$96.00 per month and the previous landlord had been paying this sum directly to the tenants in compensation since that decisions was rendered on February 17, 2010. The tenant argues therefore that the rent owed of \$4.00 per month was paid within the time frame of receiving the 10 Day Notice to End Tenancy.

I have considered both arguments in this matter and find the landlord has not established what the tenants rent should be at this time as there is conflicting documentary evidence in place to determine the tenants rent since their employment ended. A landlord cannot simply increase a tenants rent without following the correct procedures as determined under s.41 of the *Act* and as the tenancy agreement shows the tenants rent was \$150.00 at the start of the tenancy and the previous landlords accounting shows the tenants rent was established at \$1,200.00 per year in lieu of caretaker duties, the landlord cannot now determine that the tenants rent is \$220.00 per month. The landlord has the burden of proof to show what the rent should be now the tenant's employment has ended to determine how much rent is outstanding. I find the landlord has not met this burden of proof and landlords' application for an Order of Possession is dismissed.

The tenants' application to cancel the 10 Day Notice to End Tenancy is therefore upheld and the 10 Day Notice is cancelled and the tenancy will continue.

With regard to the tenants application to cancel the One Months Notice to End Tenancy; I have considered the reasons given on the One Month Notice and find that In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. In the absence of any corroborating evidence, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy and as a result, the Notice is cancelled and the tenancy will continue.

With regard to the tenants question regarding rent for May, 2012; my recommendation to the parties is that the tenants pay the amount of rent as shown on the tenancy agreement of \$150.00 and argue this matter with any further applications for the landlord to comply with the *Act*. This will give the landlord the opportunity to establish the correct amount of rent the tenants should be paying in light of the previous landlords accounting provided at the time of purchase of the park and the previous landlords monthly compensation for the tenants for the loss of their laundry facilities due to problems with the septic system.

Conclusion

The tenants' application to cancel the 10 Day Notices is allowed. The 10 Day Notices to End Tenancy for unpaid rent dated, March 26, 2012 are cancelled and the tenancy will continue.

The tenants' application to cancel the One Month Notice to End Tenancy for cause is allowed. The One Month Notice dated March 28, 2012 is cancelled and the tenancy will continue.

As the tenants have been largely successful with the portion of their application heard today I find the tenants are entitled to recover the **\$50.00** filing fee from the landlord

pursuant to s. 72(1) of the *Act*. The tenants may deduct this sum from their next rent payment after the landlord has established how much rent is due.

The tenants' application to dispute an additional rent increase is dismissed with leave to reapply.

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

The landlord application for an Order of Possession is 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: May 01, 2012.

Residential Tenancy Branch