



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, DRI, RPP, LRE, OPT

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant seeking a Monetary Order for money owed or compensation for late fees collected by the landlord. In addition to the above, the tenant was seeking to obtain orders to force the landlord to return the tenant's property, to suspend or restrict the landlord's right to enter the rental unit and to grant the tenant possession of the rental premises. The tenant's application also indicated that the tenant was disputing an additional rent increase.

Both parties attended and gave testimony in turn.

Issue(s) to be Decided

At this hearing the issues to be determined, based on the testimony and the evidence, were:

- Is the tenant entitled to be reimbursed for late fees collected that were not based on valid terms in the tenancy agreement?
- Should the landlord be ordered to return the tenant's property?
- Should the landlord's right to access the property be restricted?
- Is the tenant entitled to an Order of Possession
- Did the landlord impose an illegal rent increase?

Background and Evidence

The tenancy began approximately 7 years ago when the tenant took over the pad rental from her father. The current pad rental is \$306.00 per month.

The tenant submitted into evidence a copy of the original written tenancy agreement between her father, who was the previous tenant, and the landlord. No written tenancy agreement between the current tenant and the respondent landlord exists. However, a copy of the "*Park Rules*" for the Manufactured Home Park was in evidence.

A previous hearing was held on April 23, 2012 on the landlord's application seeking to end the tenancy for unpaid rent. The landlord was granted an Order of Possession dated April 24, 2012 and this was served on the tenant.

The previous dispute resolution officer also found that the tenancy agreement between these two parties did not contain a term permitting the landlord to charge late fees. The tenant was also ordered to reimburse the landlord the \$50.00 fee paid by the landlord to file the application.

The tenant testified that, after the previous hearing, she did not vacate the rental pad and her rent was paid directly to the landlord through a cheque from the Ministry.

The landlord acknowledged that rent has been accepted from the tenant after the previous hearing and after the Order of Possession was served on the tenant. The landlord testified that, despite being served with the order to vacate the park, the tenant continued to over-hold and remained on the site. The landlord testified that, for this reason, her payment of the rent was accepted. The landlord testified that they did not intend to continue the tenancy. The landlord acknowledged that they did not issue a receipt or statement to the tenant indicating that the rent funds were strictly being accepted, "*for use and occupancy only*" and to expressly clarify that that their acceptance of rent for the pad did not function to reinstate the tenancy. The landlord testified that, although they were terminating the tenancy, they had given the tenant an option to sign a written tenancy agreement creating a new contract of tenancy between them. However, the tenant refused to sign the new agreement they offered.

The tenant did not dispute the above testimony. The tenant said that she did not sign a new tenancy agreement because the terms were not acceptable. The tenant stated that she felt the landlord was harassing her. The tenant testified that she would have signed a new written agreement with the same verbal terms they had followed to date or a written agreement that was identical to the original one her father had signed prior to transferring ownership of the manufactured home to the tenant.

The tenant testified that the landlord had wrongfully collected late fees over an extended period of time. The tenant submitted copies of two recent receipts that indicated \$25.00 in late fees were paid. The tenant testified that she did not have any other documentation proving that she paid late fees because the landlord failed to issue receipts on many occasions and the records she did have in her possession were misplaced. However, the tenant estimated that the late payments had added up to at least \$400.00 over the years.

The landlord disputed the tenant's claim for wrongfully charged late fees. The landlord admitted that the park did not keep individual ledger accounts for each tenant. The

landlord testified that receipts were always issued for any payment except those arriving by direct cheque and pointed out that the two receipts the tenant submitted showing payment of “late fees” actually referred to the tenant’s payment of the \$50.00 cost of the previous hearing. This was awarded to the landlord and had been paid in two instalments of \$25.00, but mistakenly identified as “late fees” on the receipts.

With respect to the tenant’s request to dispute an additional rent increase shown on her application, the tenant testified that this part of the application was in reference to late fees charged, not rent.

With respect to the tenant’s allegation on the application indicating that the landlord was refusing to return her property, the tenant testified that this referred to the fact that she was being pressured by the landlord to vacate the park pursuant to the Order of Possession, and the landlord had threatened to have her manufactured home towed.

The landlord testified that none of the tenant’s personal property was ever taken.

In regard to the tenant’s request for an order to suspend or set conditions on the landlord’s right to enter the premises, the tenant testified that the landlord had been coming onto her pad site without Notice.

The landlord testified that they did not trespass on the tenant’s pad site. The landlord testified that they were well aware of the requirement to give 24 hours written notification and followed the Act in this regard.

The tenant is also requesting an Order of Possession.

The landlord’s position is that the tenant has no right to possess the unit because a legal Order of Possession was issued at the previous hearing and properly served on the tenant and this order granted the landlord exclusive possession of the pad site.

Analysis

Monetary Compensation for Late Fees

The tenant is requesting a refund of late fees charged by the landlord. , I find that section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for any damage or loss that results. Section 60 of the Act grants a Dispute Resolution Officer authority to determine the amount and order payment under the circumstances.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent *in violation of the Act, agreement or an order*
3. Verification of the amount to compensate for the loss or to rectify the damage.
4. Proof that the claimant took reasonable steps to minimize the loss or damage.

In this instance, the burden of proof is on the tenant; to prove the existence of the damage/loss stemming directly from a contravention of the Act or agreement.

Given that I am bound by the previous determination at the dispute resolution hearing, held on April 23, 2012, that there was no term in the tenancy agreement permitting the landlord to charge late fees, I accept that the landlord's action in charging late fees is a violation of the Act and this fact satisfies elements 1 and 2 of the test for damages. However, in order to meet the criteria to satisfy element 3 of the test, I find that the tenant would need to provide verification that supported the amount of the claim. I find that the evidence submitted by the tenant did not sufficiently verify the late-fee refund she is claiming. I therefore find that the tenant's claim for \$400.00 must be dismissed.

Order to Return Property

With respect to the tenant's request for an order that the landlord return the tenant's property, I find that the landlord did not confiscate any property belonging to the tenant and this portion of the tenant's application must be dismissed.

Order to Restrict Access

I find that the request to restrict the landlord's right to access the property is not supported under the circumstances because the tenant has not sufficiently proven that the landlord has violated the Act in this regard. In any case, under section 23 of the Act, the landlord is required to give proper written notice before accessing the property. I find that this portion of the tenant's application must be dismissed.

Additional Rent Increase

With respect to the tenant's allegation that the landlord imposed an illegal rent increase, I find that this was not sufficiently proven and therefore this portion of the tenant's application must be dismissed.

Order of Possession

Finally, with respect to the tenant's request for an Order of Possession, I find that an order granting possession is not necessary. I find that the tenant is currently already in possession of the rental site and has a legal right to possession based on the fact that the landlord reinstated the tenancy after serving the Order of Possession dated April 24, 2012. I find that the landlord's acceptance of rent from the tenant, without making sure that the tenant was understood that the funds were only being accepted for use and occupancy, functioned to re-establish the tenancy, despite the fact that this was not the landlord's intent.

Tenancy Agreement

In regard to the landlord's attempt to impose different tenancy terms or initiate a new tenancy agreement, I find that section 14(1) of the Act states that a tenancy agreement may not be amended to change or remove a standard term. Although, a tenancy agreement **can be** amended to add, remove or change a term other than a standard term, this is only possible if both parties agree to the changes.

Given the above, I find that this landlord is not at liberty under the Act to unilaterally change any terms in the existing tenancy agreement.

I find that the terms of this tenancy are identical to the original written agreement that had been signed by the landlord and the previous tenant because the pad agreement was transferred from the original owner of the manufactured home to the purchaser, who was his daughter. Therefore the tenancy terms that were in existence at that time would apply. The pad rent of \$306.00 per month will continue unless it is increased in accordance with the Act and Regulations.

I find that there appeared to be some confusion about what provisions can be enforced as a "Park Rule" versus what is required to be a term in a tenancy agreement.

Park rules are included as part of the tenancy agreement and must be attached to the agreement, but, unlike the terms in a tenancy agreement, park rules can be periodically revised for the good of the park residents and apply primarily to regulating the park at large and the use of common areas.

Section 29 (1) of the Manufactured Home Park Tenancy Act states that, prior to a person's entering into a tenancy agreement with a landlord, the landlord must disclose in writing to that person all rules in effect at the time of entering into the tenancy agreement. To change the Park rules, section 29(2) of the Act states that subsequent to the tenant entering into the tenancy agreement with a landlord, the landlord must give

notice in writing to that tenant of any new or changed rule at least two weeks before the rule becomes effective.

Section 30 of the Act provides that a park committee or, if there is no park committee, the landlord, may only establish, change or repeal a rule if it is reasonable in the circumstances and if the rule has one of the following effects:

- (a) it promotes the convenience or safety of the tenants;
- (b) it protects and preserves the condition of the manufactured home park or the landlord's property;
- (c) it regulates access to or fairly distributes a service or facility;
- (d) it regulates pets in common areas.

According to section 30(3), a park rule established, or the effect of a change in or elimination of, a park rule is enforceable against a tenant only if:

- (a) the rule applies to all tenants in a fair manner,
- (b) the rule is clear enough that a reasonable tenant can understand how to comply with the rule,
- (c) notice of the rule is given to the tenant in accordance with section 29 *[disclosure]*, and
- (d) the rule does not change a material term of the **tenancy agreement**.

(my emphasis).

Conclusion

Based on the testimony and evidence, I find that this tenancy was reinstated with the same terms as were established from the start and the tenant is therefore entitled to retain possession.

The remainder of the tenant's application 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: June 12, 2012.

Residential Tenancy Branch