



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, FF

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution disputing and additional rent increase.

The hearing was conducted via teleconference and was attended by the tenants only. The landlord did not attend.

The tenants testified the landlord was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 52(3) of the *Manufactured Home Park Tenancy Act (Act)* by registered mail on July 3, 2012 in accordance with Section 82. As per Section 83, the documents are deemed received by the landlord on the 5th day after it was mailed.

Based on the testimony of the tenants, I find that the landlord has been sufficiently served with the documents pursuant to the *Act*.

While the tenants have submitted substantial evidence regarding concerns related to the stability of a cliff area behind their pad they have not applied for any action on the part of the landlord in this Application. I advised the tenants they remain at liberty to seek a remedy through submitting a separate Application for Dispute Resolution to deal with these additional matters.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to cancel a rent increase and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 28, 34, 35, 36, 60, and 65 of the *Act*.

Background and Evidence

The tenants submit that they moved into the manufactured home on this site on July 1, 2009 and have paid the amount of the pad rental to the previous tenant, who until December 31, 2011 had owned the manufactured home. The tenants provided confirmation the previous home owner paid the paid rent to the landlord.

The tenants submit that effective January 1, 2012 they became the owners of the manufactured home through a separate agreement with the previous home owner and began to pay pad rent directly to the landlord.

The tenants also submit that the landlord's agent informed the female tenant verbally at her place of employment in January 2012 that since the tenants now owned the trailer the pad rent was going to be \$250.00 beginning immediately. The tenants have provided documentary evidence, in the form of copies of negotiated cheques, to confirm that they have paid the landlord \$250.00 per month from February 2012 to July 2012.

The tenants also provided documentary evidence, in the form of a copy of a negotiated cheque for December 2011, that the previous owner was paying \$207.00 to the landlord for the pad rental.

The tenants testified they have not entered into a new or separate tenancy agreement with the landlord. The previous manufactured home owner has submitted a written statement indicating he had never received a written tenancy agreement during his tenancy since 1997.

Analysis

Section 28 of the *Act* allows a tenant to assign their tenancy if:

1. The tenant has obtained prior written consent of the landlord;
2. The tenant has obtained an order authorizing the assignment; or
3. The tenancy agreement authorizes the assignment.

In the absence of any evidence or testimony from the landlord before me indicating that the tenancy was not assigned to these tenants or that a new tenancy agreement was entered into and since the tenants have lived in the rental unit since 2009, I find the landlord would not likely have any grounds to not accept an assignment of the tenancy in accordance with Residential Tenancy Regulation Section 48, I find the original tenancy was assigned to these tenants.

As I have found the tenancy has been assigned I also find that all of the terms and conditions of the previous tenancy agreement have been assigned, including rent in the amount of \$207.00 per month.

In order to impose a rent increase the landlord is required to follow the requirements outlined under Sections 34, 35, and 36 of the *Act*. Specifically, a notice of rent increase must be in the approved form and the rent increase must be calculated only in accordance with the regulations.

From the undisputed evidence and testimony of the tenants, I find the landlord has imposed a rent increase that does not comply with either the requirement for notice or

the amounts calculated. I note that as a result the tenants have over paid their rent in the amount of \$43.00 per month for 6 months for a total overpayment of \$301.00

Conclusion

I find the tenants are entitled to recover the above noted overpayment of \$301.00, in accordance with Section 36(5) of the *Act* by deducting this amount from future rent payments.

In addition, as the tenants were successful in their Application I grant that they are entitled to recover they filing fee for this Application in the amount of \$50.00, by deducting this amount from a future rent payment pursuant to Section 65(2).

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: July 24, 2012.

Residential Tenancy Branch