



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR; MNR; FF

Introduction

This is the Landlord's application for an Order of Possession and Monetary Order for unpaid rent; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Preliminary Matters

At the outset of the Hearing it was determined that the Landlord had the Tenant's first and last name reversed on his Application for Dispute Resolution and therefore the name of the Tenant was amended on the Landlord's application.

The Landlord filed his application under the Residential Tenancy Act. This is a Manufacture Home Park Tenancy Act matter, and therefore the Landlord's application was amended accordingly.

Issues to be Decided

- Is the Notice to End Tenancy issued December 12, 2012, a valid notice to end the tenancy?
- Is the Landlord entitled to a Monetary Order for unpaid rent in the amount provided on the Notice to End Tenancy?

Background and Evidence

The Landlord provided a copy of the tenancy agreement in evidence. The tenancy agreement indicates that there are two tenants, neither of which is the Tenant named in the Landlord's Application for Dispute Resolution. It also indicates that the tenancy began on February 1, 2009, and that monthly rent at the beginning of the tenancy was \$570.00 due on the first day of each month.

The Tenant stated that the tenancy agreement that was provided in evidence was not his tenancy agreement. He stated that he purchased the manufactured home and that the tenancy began on March 1, 2010. He stated that since his tenancy began there have been at least 3 rent increases for which he received no written Notice of Rent Increase. The Tenant testified that he did not agree to any rent increases and stated that he doesn't understand the Landlord's accounting of outstanding rent. The Tenant questioned whether the Landlord had added late fees and interest to the amount owed. He testified that rent in October, 2011 was \$610.00 and that he paid \$674.86 for September, 2012 rent.

The Landlord insisted that the tenancy agreement he provided in evidence was the Tenant's tenancy agreement. He testified that rent was \$630.00 in 2011; \$665.69 in 2012; and \$694.86 on January 13, 2013. The Landlord stated that the rent increases were valid, but he did not provide copies of any Notices of Rent Increase in evidence or any copies of the Tenant's written agreement to the rent increases.

Analysis

Part 4 of the Act and Part 5 of the regulation provides for when, how, and by how much rent can be increased during a tenancy.

The Act provides, in part, that:

- Rent cannot be increased except in accordance with the provisions of Part 4.
- Rent cannot be increased for at least 12 months after the tenancy starts, or after the last increase that was made in accordance with the Act.
- The Tenant must be given at least 3 months notice, in the approved form, before a rent increase can become effective.
- The Landlord may impose a rent increase only up the amount that is calculated in accordance with the regulations, or is agreed to by the Tenant in writing.
- If the Landlord collects a rent increase that does not comply with Part 4, the Tenant may deduct the increase from rent.

The Landlord insisted that the tenancy agreement provided was the Tenant's tenancy agreement. Even if I accept that the Landlord provided the required 3 months notice, which I do not, pursuant to the provisions of the regulation, the following maximum allowable rent increases were:

- February 1, 2010: 3.2% ($\$570.00 \times 3.2\% = \18.24) maximum rent \$588.24
- February 1, 2011: 2.3% ($\$588.24 \times 2.3\% = \13.53) maximum rent \$601.77
- February 1, 2012: 4.3% ($\$601.77 \times 4.3\% = \25.88) maximum rent \$627.65

Without the written agreement of the Tenant, rent could not be increased again until February 1, 2013: 3.8% ($\$627.65 \times 3.8\% = \23.85) for a maximum rent of \$651.50.

I find that the Landlord has not provided sufficient evidence of how much, if any, rent is owed. Therefore, I find that the Notice to End Tenancy issued December 12, 2012, is not a valid notice and it is cancelled and his application for an Order of Possession is **dismissed**. The Landlord's application for a Monetary Order for unpaid rent is also **dismissed, with leave to reapply**.

The Landlord has not been successful and therefore I find that he is not entitled to recover the cost of the filing fee from the Tenant.

Conclusion

The Landlord's application for an Order of Possession based on the Notice to End Tenancy issued December 12, 2012, and for recovery of the cost of the filing fee is **dismissed**.

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 *Manufactured Home Park Tenancy Act*.

Dated: February 07, 2013

Residential Tenancy Branch

