



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR; MNR

Introduction

This is the Landlord's application for an Order of Possession and a Monetary Order for unpaid rent.

The Landlord gave affirmed testimony at the Hearing.

The Landlord testified that he hand delivered the Notice of Hearing documents and copies of his documentary evidence to the Tenants on April 20, 2013, at the rental unit. The Landlord stated that he had provided two Proof of Service documents in this regard, which included the Tenants' acknowledgement of service. It was determined that the Landlord was referring to two documents entitled "**10 Day Notice for Unpaid Rent or Utilities** Proof of Service". The Landlord stated that he had intended the two documents to be proof of service of the **Notice of Hearing documents**, which includes the Notice of Hearing and a copy of his Application for Dispute Resolution. Based on the Landlord's affirmed testimony, I find that both of the Tenants were served with the Notice of Hearing documents.

Despite being served with the Notice of Hearing documents, neither Tenant signed into the teleconference which remained open for 35 minutes. The Hearing proceeded in their absence.

Preliminary Matter

The Landlord filed his Application for Dispute Resolution under the Manufactured Home Park Tenancy Act (the "MHPTA"). During the course of the Hearing, it was determined that the Landlord rents a manufactured home site from his landlord, and rents out his manufactured home to the Tenants. MHPTA applications when made by landlords are made with respect to renting out sites in a manufactured home park, where the landlord is the park's owner or agent. In this case, the Landlord is a tenant under the MHPTA, and rents out his manufactured home to the Tenants. Therefore, the Landlord's

Application was amended to properly indicate that it is made under the Residential Tenancy Act.

The Landlord stated that the manufactured home park is located on First Nations land, but that a previous Decision had accepted jurisdiction under the Act.

Issues to be Decided

- Is the Notice to End Tenancy issued April 5, 2013, valid?

Background and Evidence

The Landlord testified that the Tenants have been living in the rental unit for approximately 5 years. He stated that the site rent and the rent for the rental unit together amounted to \$750.00 per month, but that he had reduced the rent to \$720.00.

The Landlord stated that the Tenant RY pays the Landlord's pad rent directly to the Landlord's landlord and that the Tenant GY pays the rent for the rental unit to the Landlord. Later in the Hearing, he stated that the Tenants pay him the total rent for the site and the rental unit and then he in turn pays his landlord for the site rent. He stated that pad rent was \$320.00 per month, and rent for the rental unit was \$450.00.

The Landlord testified that the Tenants have not paid full rent since April, 2012. He stated that the Tenants paid the pad rent of \$320.00 and \$200.00 towards rent for the trailer on April 4, 2012, leaving a balance owing of \$250.00. Later in the Hearing, he stated that rent for the site and the trailer had been paid in full for April, 2012, but that he received no further rent at all from May, 2012 to November, 2012. He stated that he received \$200.00 on December 3, 2012 and \$300.00 on January 3, 2013, but nothing for the months of February to April, 2013.

The Landlord testified that he served the Tenants with the Notice to End Tenancy by registered mail send on April 5, 2013. The Landlord provided the receipt and tracking numbers in evidence, along with a copy of the Notice to End Tenancy. The Notice to End Tenancy indicates that the Tenants owe \$750.00 that was due on April 1, 2013 and \$2,400.00 in "rent arrears".

The "Details of Dispute" section of the Landlord's Application for Dispute Resolution indicates that he is seeking a monetary order in the amount of \$2,580.00 for 5 months of "delinquent arrears" and \$430.00 owing for April 2013. The "Monetary Order" section of his Application indicates that he seeks a monetary order for unpaid rent for the months of January, February, March, April and May, 2012.

Analysis

It is important to note that during the course of the Hearing, the Landlord alternated between being very rude and overly friendly. He was argumentative when I pointed out the discrepancies in his testimony with respect to the amount of rent that was owed, the months and year for which rent was owed, and the amounts that were paid. He suggested that I was threatening him when I cautioned him about his remarks towards me, which included calling me “dear” and questioning my mental capacity, asking if he had to “spell it out to me”. Towards the end of the Hearing, he became very talkative and friendly.

Applicants are required to come to the Hearing prepared to establish their claim. I find that the Notice to End Tenancy issued April 5, 2013, (the “Notice”) is not a valid notice. The Landlord’s Application and the Notice provided two different amounts for rent that was owed by the Tenants, and different months for which the rent was owed. The Application indicates that \$2,580.00 is owed in outstanding rent. The Notice to End Tenancy indicates that a total of \$3,150.00 is owed. During his oral testimony, the Landlord provided contradictory statements with respect to rent payments and the total amount of rent that was owed (\$720.00, \$750.00 and \$770.00). I find that the Landlord has not established the amount of rent, if any, that is actually owed.

Having found that the Notice is not a valid notice to end the tenancy, I dismiss the Landlord’s Application for Dispute Resolution. The Landlord is at liberty to issue another Notice to End Tenancy.

Conclusion

The Notice to End Tenancy issued April 5, 2013, is cancelled. The Landlord’s Application is **dismissed**. The Landlord is at liberty to issue another Notice to End Tenancy, should he so desire.

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 16, 2013

Residential Tenancy Branch