



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the tenants application to cancel the Notice to End tenancy for unpaid rent; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 82 of the *Act*; served by registered mail on July 12, 2013. Canada Post tracking numbers were provided by the tenant at the hearing. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 83(a) of the *Act*.

The tenant appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Manufactured Home Park Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Has the tenant sufficient evidence to have the 10 Day Notice to End Tenancy cancelled?

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The tenant testifies that she inherited her grandfather's trailer on the site in 2005 and became a tenant at the site at that time with the previous landlords. The park is now owned and operated by the new landlord. The tenant testifies that she does not live in the trailer but sublets it to tenant's effectively becoming the landlord to any tenants renting the trailer. The tenant testifies that she remains responsible for the pad rent for the site which is currently \$299.00. Rent is due on the first of each month in advance.

The tenant testifies that the landlord has served the tenant with numerous eviction notices. The latest 10 Day Notice was served to the tenant by registered mail on or about July 03. The tenant has provided a copy of that Notice in evidence. The Notice informs the tenant that rent is owed of \$299.00 due on July 01, 2013. It also has been documented by hand on the Notice that \$249.00 has been paid and \$50.00 is short. The Notice has an effective date of July 24, 2013.

The tenant testifies that at a previous hearing held on June 07, 2013, the tenant was awarded the \$50.00 filing fee and was permitted to deduct that from her next rent payment. The tenant testifies that the current landlord was in attendance at that hearing and should have been aware that the tenant was permitted to deduct her filing fee from the rent for July. The landlord still served the tenant with the 10 Day Notice. The tenant seeks to have this Notice cancelled.

The landlord did not attend the hearing but did provide some written submissions in which the landlord has stated that at the time the Notice was issued to the tenant the landlord was not aware that the tenant was able to deduct the filing fee from the previous hearing. The tenant testifies that the landlord is aware that the tenant does not reside in the trailer however the landlord continues to serve eviction notices and other Notices to the door of the trailer and also serves any eviction Notices by registered mail to the tenants address.

The tenant testifies that the landlord does have the tenant's address at which the tenant resides and should send all notices and letters to the tenant at her home address and not put them on the door of the trailer as the tenant may not get them.

The tenant testifies that due to the notices being posted on the door of the trailer this puts off potential renters from renting the trailer. The tenant testifies that she has a For Rent sign in the window of the trailer and has recently lost a potential renter because of the 10 Day Notice posted to the door. Renters do not want to enter into a rental agreement with the threat of eviction ever present. The tenant testifies that the trailer has not been rented now since May, 2013 and the tenant still has to pay the pad rent to the landlord.

The tenant testifies that she has not been given a copy of the park rules to see what rules are in place for subletting. The tenant seeks to have a copy of the current park rules to ensure that the landlords do not unreasonable withhold their consent to the tenant subletting the trailer. The tenant seeks to recover two Months rent of \$548.00 in compensation due to the landlords harassment of continually serving eviction Notices namely four in the last few months.

The tenant testifies that she recently found a letter from the landlord concerning security cameras located in the park and the letter pinpointed and identified the tenant's trailer as having had occupants that have been arrested and in jail and another tenant going to court. The tenant testifies that she has been informed that one of these cameras is pointing at the tenants trailer and is an infringement of the privacy of any occupants residing in that trailer. The tenant seeks clarification from the landlord as to the exact location of this camera in order to determine if it continues to be pointed at the tenant's trailer.

Analysis

The landlord did not appear at the hearing to dispute the tenant's claims, despite having been given a Notice of the hearing; therefore, in the absence of the landlord, I have carefully considered the tenant documentary evidence and sworn testimony before me.

With regard to the 10 Day Notice to End Tenancy; the tenant was awarded the filing fee of \$50.00 at the previous hearing a copy of that decision has been provided in evidence. The tenant was also allowed to deduct that amount from her next rent payment. The tenant deducted the sum of \$50.00 and paid the rent of \$249.00. I therefore find at the time the Notice was issued and served to the tenant that no rent was outstanding and the 10 Day Notice has no cause or effect and is hereby cancelled.

With regard to the tenants claim for compensation; I have carefully considered the tenants evidence and testimony. The landlord is aware that the tenant does not reside in the rental unit and therefore if the landlord has any issues with the tenant or the tenants sub lease tenants then the landlord must serve the tenant at the address to which the tenant resides and not to the door at the trailer in accordance with s. 81 of the *Act* as it is the tenant who is the tenant of the landlord and any occupants of the trailer are tenants of this tenant.

With the matter of the eviction Notices; as long as a landlord believes he has reason to end the tenancy, he can make that assertion "frequently, emphatically and even rudely" and that the landlord is entitled to threaten proceedings in the courts for possession, even if the landlord is wrong. The tenants remedy would be to dispute the Notice ending the tenancy once given. Consequently, I cannot Order that the landlord desists in sending eviction Notices to the tenant. At the previous hearing the landlord was ordered not to serve One Month Notices to the tenant while the trailer remains unoccupied and that Order still stands. I do However Order the landlord to ensure that any other Notices are sent to the tenant at the address to which the tenant resides.

The tenant has requested compensation however the tenant has insufficient evidence to show that the posting of these Notices has had a detrimental effect on the tenant's ability to sublet the trailer or that the tenant has been approached by a tenant wishing to sublet the trailer. Therefore I have no proof that the landlords actions have resulted in the tenant suffering a loss of income by being unable to sublet the trailer. Consequently the tenant's application for compensation of \$548.00 must fail.

I do however award the tenant the filing fee of \$50.00 as the tenant has been successful in setting aside the Notice. I Order the tenant to deduct that sum from the next rent when it is due and payable. The landlord must take Note of this decision and cannot serve the tenant with a 10 Day Notice to End Tenancy when the tenant next pays the reduced rent of \$249.00.

I caution the landlord to ensure the tenant is provided with a copy of the park rules and regulations; I also draw the landlord's attention to s.28 of the Act which states:

28 *(1) A tenant may assign a tenancy agreement or sublet a manufactured home site only if one of the following applies:*

(a) the tenant has obtained the prior written consent of the landlord to the assignment or sublease, or is deemed to have obtained that consent, in accordance with the regulations;

(b) the tenant has obtained an order of the director authorizing the assignment or sublease;

(c) the tenancy agreement authorizes the assignment or sublease.

(2) A landlord may withhold consent to assign a tenancy agreement or sublet a tenant's interest in a manufactured home site only in the circumstances prescribed in the regulations.

(3) A landlord must not charge a tenant anything for considering, investigating or consenting to an assignment or sublease under this section.

Regarding the tenants claim that the landlord has positioned a camera directed at the tenants trailer. I caution the landlord to ensure that any security cameras are not used to invade the privacy of any occupant of the park. Cameras must be located in a position that does not point directly at any trailer in the park. Furthermore the landlord must be careful with the wording of any letters sent to residents living in the park to ensure the letters do not give personal details or identify individuals or homes to other tenants.

Conclusion

The tenant's application to cancel the 10 Day Notice to End Tenancy is upheld. The Notice dated July 03, 2013 is cancelled and the tenancy will continue.

The tenants claim for a Monetary Order is dismissed without leave to reapply.

The tenant may deduct the **\$50.00** filing fee from the next rent when it is due and payable.

The landlord must take heed of the cautions mentioned in this decision and act within the boundaries of the *Manufactured Home Park Tenancy Act* and the *Privacy Act*.

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: August 15, 2013

Residential Tenancy Branch

