



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CREST GROUP HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI, MNDC, FF

Introduction

This hearing dealt with a tenant's application to dispute a rent increase and request for a Monetary Order for recovery of overpaid rent. The landlord did not appear at the hearing. The tenant submitted that the hearing documents were sent to the landlord via registered mail on September 7, 2013 and the landlord's agent received the documents on September 10, 2013. The tenant provided a registered mail tracking number as proof of service and testified that the landlord had responded to the tenant's application by sending them a cheque in the amount of \$0.10 and a letter indicating that the landlord considered the matter resolved. I was satisfied the landlord had been served with notification of this proceeding and I continued to hear from the tenant without the landlord present.

Issue(s) to be Decided

1. Have the tenants overpaid rent?
2. Are the tenants entitled to recover a rent increase collected by the landlord since December 2012?

Background and Evidence

The tenant provided the following undisputed submissions:

- The landlord served the former tenant with parts of a Notice of Rent Increase indicating the rent would increase from \$217.48 to \$226.84 starting December 1, 2012.
- The tenants entered into an agreement to purchase the manufactured home with the executor of the former tenant's estate in December 2012, subject to an assignment of the tenancy agreement.
- On December 8, 2012 the executor submitted a "Request for Consent to Assign a Manufactured Home Site Tenancy Agreement" to the landlord with an effective assignment date of January 1, 2013.

- The landlord did not respond to the Request for Consent to Assign within the required 10 days of receiving the request meaning the landlord's consent was "conclusively deemed to have been given" under the Manufactured Home Park Tenancy Regulations.
- On January 16, 2013 the landlord signed the Request for Consent to Assign but did not indicate whether consent was given or refused.
- On January 27, 2013 the tenants and the landlord signed a tenancy agreement.

The tenant testified that the executor of the former tenant's estate paid the increased rent of \$226.84 for the months of December 2012 and January 2013 and the tenants started paying rent of \$226.84 as of February 2013.

The tenant submitted that the landlord had served the former tenant with a Notice of Rent Increase that was non-compliant with the Act because:

1. The landlord did not serve the former tenant with all of the pages of the Notice; and,
2. The amount of the increased rent should have been limited to \$226.83 but the landlord indicated the increased rent was \$226.84.

The tenant is of the position that since the Notice of Rent Increase is incorrect the rent should be set at \$217.48 (the monthly rent prior to the rent increase) and the tenants refunded the rent increase paid since December 2012.

The tenants had submitted copies of the subject Notice of Rent Increase and the Request for Consent to Assign as evidence for this proceeding; however, I noted the tenant had not supplied a copy of the tenancy agreement he referred to in his submissions. I ordered the tenant to provide me with a copy of the tenancy agreement, which he did the day following the hearing.

The copy of the tenancy agreement provided for my review is of very poor quality; however, I was able to read the following key information on the document:

- The document identifies the named tenants as tenants for the subject rental site;
- That the tenancy commences on February 1, 2013;
- That the monthly rent is \$226.84; and,
- That the agreement was executed by the landlord and the tenants on January 27, 2013.

Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons.

Under the Act, the amount of rent payable by a tenant is as agreed upon by the parties and reflected in the tenancy agreement, subject only to certain provisions of the Act such as permissible rent increases.

Although the tenant was of the position that a tenancy agreement for the rental site was assigned to the tenants effective January 1, 2013 since the landlord failed to respond to the Request for Consent with 10 days of receiving it, I find that tenancy agreement was replaced with a subsequent, duly executed tenancy agreement starting February 1, 2013. I find that in entering into a new tenancy agreement on January 27, 2013 with an effective date of February 1, 2013, the former tenancy agreement came to an end January 31, 2013.

Since the tenancy agreement that commenced February 1, 2013 reflects a monthly rent of \$226.84, I find that is the amount the tenants are required to pay to the landlord starting February 1, 2013 and there is no basis under the Act to set the rent at a lesser amount. Since the tenants have been paying rent of \$226.84 as required under their tenancy agreement I find the tenants have not overpaid the rent due to the landlord.

I make no award to the tenants for overpaid rent for the months of December 2012 or January 2013 as they did not pay any rent for those months; thus, they have not suffered a loss as a result of a non-compliant Notice of Rent Increase.

In light of the above, I deny the tenants' request to set the rent at a lesser amount and I make no award to the tenants for recovery of overpaid rent. As such, their Application for Dispute Resolution is dismissed in its entirety.

Conclusion

The tenants' application has been dismissed in its entirety.

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: January 10, 2014

Residential Tenancy Branch

