



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, MT, MNDC, RR

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant has made application to set aside a Notice to End Tenancy for Unpaid Rent; for more time to apply to set aside a Notice to End Tenancy; for a monetary Order for money owed or compensation for damage or loss; and to reduce rent for services or facilities agreed upon but not provided.

As the Tenant applied to set aside the Notice to End Tenancy on November 13, 2013 and it was served to him on November 08, 2013, I find there is no need to consider the application for more time to apply to set aside a Notice to End Tenancy.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Should the Notice to End Tenancy for Unpaid Rent, served pursuant to section 39 of the *Manufactured Home Park Tenancy Act (Act)*, be set aside and is the Tenant entitled to compensation for being without a shower?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began at least two years ago; that the Tenant is required to pay monthly rent of \$450.00 for his site; that rent is due by the first day of each month; that his rent includes the right to use common shower facilities in the trailer park; and that the Tenant does not have shower facilities in his trailer.

The Tenant is seeking compensation, in the amount of \$100.00, as the common shower facilities were not working for a period of time. The Tenant stated that the showers

stopped working sometime during the latter part of October of 2013; that he is not certain when the showers were repaired; and that when he checked on, or about, December 27, 2013, the showers were working.

The Landlord stated that the showers stopped working sometime in November of 2013; that they were repaired sometime in November of 2013; and that they were only in broken for 6 or 7 days.

The Landlord argued that the Tenant had the ability to shower in his father's trailer, who also lives in the trailer park, so the impact of the broken showers on the Tenant was minimal. The Tenant stated that he was unable to use his father's shower, as it has not been working.

The Landlord and the Tenant agree that the Tenant has paid not rent for November of 2013; that the Tenant told the Landlord that he was withholding \$150.00 of the rent for November as a result of the broken shower facilities; that the Tenant offered the Landlord \$300.00 in rent for November of 2013; and that the offer of \$300.00 was declined by the Landlord.

The Landlord stated that a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of November 08, 2013, was personally served to the Tenant sometime in November of 2013. The Tenant stated that this Notice was personally served to him on November 08, 2013.

Analysis

On the basis of the undisputed evidence, I find that the common shower facilities in this trailer park were broken for at least 6 or 7 days during the month of November of 2013. As the use of the shower facilities was a facility that was provided with the tenancy, I find that the Tenant is entitled to a rent reduction for the period of time this service was unavailable to him, pursuant to section 21 of the Act.

Although it is difficult to determine how much compensation the Tenant should be awarded for being without shower facilities for approximately one week, I find that compensation of \$25.00 per week is reasonable and I grant the Tenant compensation in the one week that he was without service. I therefore find that the Tenant is only obligated to pay monthly rent of \$425.00 for November of 2013.

When making a claim for damages or loss under a tenancy agreement or the Act, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or Act; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

I find that the Tenant bears the burden of proving how long he was without the use of the common shower facilities. I find that the Tenant submitted insufficient evidence to show that he was without the use of these facilities for more than 7 days. In reaching this conclusion, I was heavily influenced by the absence of any evidence that corroborates the Tenant's testimony that the showers were broken for over one month or that refutes the Landlord's testimony that they were only broken for 6-7 days. I therefore find that the Tenant is not entitled to compensation for being without shower facilities for any period longer than one week.

Section 20(1) of the *Act* requires a tenant to pay rent when it is due even if the landlord fails to comply with the *Act*. A tenant does not have the right to withhold any portion of the rent because a service or facility has been withdrawn unless the tenant has made emergency repairs or the tenant has authorization from the director of the Residential Tenancy Branch. I find that the Tenant did not have the right to withhold any portion of the rent that was due on November 01, 2013.

I find that even if the Landlord had accepted the \$300.00 rent payment that was offered for November, the Tenant would still have failed to comply with section 20(1) of the *Act*, because the full \$450.00 would not have been paid.

Section 39 of the *Act* authorizes a landlord to end a tenancy if rent is not paid when it is due by serving the tenant with notice to end the tenancy. On the basis of the undisputed evidence, I find that the Landlord personally served the Tenant with a Ten Day Notice to End Tenancy on November 08, 2013, which had a declared effective date of November 08, 2013. As the rent remains unpaid, I find that the Landlord has the right to end the tenancy on the basis of this Notice. I therefore dismiss the Tenant's application to set aside this Notice to End Tenancy.

Section 39(1) of the *Act* stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the Tenant receives the Notice. As the Tenant is deemed to have received this Notice on November 08, 2013, I find that the earliest effective date of the Notice was November 18, 2013.

Section 46 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was November 18, 2013.

Conclusion

The Landlord was given several opportunities to request an Order of Possession at this hearing but she did not do so. An Order of Possession has therefore not been granted.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: January 07, 2014

Residential Tenancy Branch

