



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC & FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Notice to End Tenancy was sufficiently served on the Tenant by posting on November 14, 2013. Further I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the Tenant by posting on January 20, 2014. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an Order for Possession pursuant to a one month Notice to End Tenancy dated November 14, 2013 and setting the end of tenancy for December 31, 2013?
- b. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

The tenant testified the manufactured home which is the subject of these proceedings was purchased from the Landlord in 2007 for \$8000. The trailer in question is old and

cannot be moved. She testified that over the years she has significantly improved the manufactured home and it is now worth between \$28,000 and \$40,000.

The landlord testified the tenant has been repeatedly late paying the rent. Specifically the tenant failed to pay the rent for the period from January 2011 to February 2012 and paid the rent only after a dispute resolution hearing on February 16, 2012. Further, the tenant was repeatedly late paying the rent from May 2012 to June 2012 and paid only after a dispute resolution hearing held on June 21, 2012. Finally the tenant failed to pay the rent from February 2013 through August 2013 and paid only after a dispute resolution hearing held on September 12, 2013.

During the hearing on September 12, 2013 the parties entered into a settlement and the arbitrator recorded the settlement. It provided that the tenant pay the full amount outstanding in the sum of \$2971.28 by September 20, 2013 and further, she pay the rent for the period October 1, 2013 to March 31, 2014 in the sum of \$2400 in advance on October 1, 2014. The agreement provided that if the tenant complies with the agreement the landlord would allow the tenancy to continue and that the landlord was at liberty to reapply if the tenant failed to comply with the agreement.

The tenant paid the arrears and the rent for the period October 1, 2013 to March 31, 2014 in advance although the payments were not made on the dates set out in the agreement. The landlord accepted the payments unconditionally.

Analysis

After carefully considering all of the evidence I determined the landlord has failed to establish sufficient grounds to end the tenancy. The Manufactured Home Park Tenancy Act permits a landlord to serve a one month Notice to End Tenancy if the tenant "is" repeatedly late paying the rent. The Policy Guidelines further provide that 3 late payments are necessary to amount to repeatedly late payments. In this case at the time the one month Notice to End Tenancy was served on the Tenant the rent had been fully paid in advance and the landlord was holding a surplus of rent. I determined that

the requirement that the tenant “is” repeatedly late pay the rent was not met as the landlord was holding 4 months surplus of rent.

The landlord submits that as the tenant failed to file an Application for Dispute Resolution contesting the one month Notice she is conclusively deemed to have accepted the end of the tenancy. I determined the failure of the tenant to file an Application for Dispute Resolution does not prevent an arbitrator from dismissing the landlord’s application for an Order for Possession where the Notice is not accurate on its face. Further, the landlord has reinstated the tenancy by accepting the payment of the arrears and 6 month advance payment of rent without condition. It was open to the landlord to accept these payments “for use and occupation only” thereby retaining the right to seek an Order for Possession for the period commencing April 1, 2014. The landlord did not do this.

As a result I order that the landlord’s application be dismissed. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

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* Residential Tenancy Act.

Dated: February 28, 2014

Residential Tenancy Branch

