



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Lombardy Management Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNR, RR, FF

Introduction

This hearing dealt with an application by the tenants for orders setting aside a 10 Day Notice to End Tenancy for Non-Payment of Rent, granting them more time in which to file that application, reducing the rent for repairs, services or facilities agreed upon but not provided, and reimbursement of the filing fee from the landlord.

The tenants served the Application for Dispute Resolution and Notice of Hearing by posting them to door of the office address shown on the Notice to End Tenancy. The tenant spoke to the park manager on June 18 about the hearing and was advised that the landlord was prepared to go ahead with the hearing. However, no one appeared at the hearing for the landlord.

Issue(s) to be Decided

- Is the 10 Day Notice to End Tenancy for Non-Payment of Rent dated June 6, 2014 valid?
- Should any reduction in the tenants' rent be ordered and, if so, in what amount?
- Are the tenants entitled to reimbursement from the landlord of the fee they paid to file this application?

Background and Evidence

The tenants rent a pad in a manufactured home park and have done so for about three years. The male tenant is the owner of the manufactured home. The other tenant is his girlfriend. The monthly rent of \$290.00 is due on the first day of the month.

For a while the male tenant rented his manufactured home to another person. His renter was supposed to be paying the pad rent directly to the landlord. Eventually the

tenant discovered that his renter had been paying the pad rent and \$1400.00 in arrears of rent, up to and including the February 2014 rent had accrued.

The tenant got rid of his renter, moved into his manufactured home, and entered into a payment plan with the park manager. In March and April the tenant made three payments of \$280.00 each to be applied to the March rent, the April rent and the arrears. After these payments were made the arrears were \$1140.00 (\$1400.00 - \$260.00).

The landlord approached the tenant, who is a tradesman, about doing some work on two manufactured homes located in the park and owned by the landlord. The agreement was that payment for the work done would be half off the rent owed and half in cash.

The tenant did dry walling and tiling in both manufactured homes. He testified that the value of his work, at the rate agreed upon in advance by the landlord is:

Trailer #1	\$ 400.00
Trailer #2	\$2700.00

The landlord advanced the tenant \$100.00 on April 15 and \$200.00 on May 16. The tenant says he presented written invoices to the landlord for the work on May 16, 2014. The invoices totalled \$2800 because he credited the landlord with the \$300.00 already paid to him.

The landlord did not agree with the amounts claimed by the tenant and has refused to pay him anything. A week after their last discussion, the tenant found a 10 Day Notice to End Tenancy for Non-Payment of Rent posted to the door of his manufactured home. The notice claimed arrears of rent in the amount of \$2215.00.

The tenant filed this application for dispute resolution on June 10. He testified that he has not paid the May or June rent because that was part of the agreement and that he has not paid the July or August rent pending the outcome of this hearing.

Analysis

The notice to end tenancy was posted to the door of the tenant's manufactured home on June 6. Pursuant to section 83 of the Manufactured Home Park Tenancy Act the notice is deemed delivered on the third day after it is attached. Section 39(5) give a tenant five days from the date they receive, or are deemed to receive, a 10 Day Notice to End Tenancy for Non-payment of Rent to file an application with the Residential

Tenancy Branch disputing the notice. The tenants filed their application on June 11, within the time limit. Accordingly, no order extending the time for filing this application is required.

Based on the evidence before me I find that the landlord did contract with the tenant to do certain work and that the value of that work, after crediting the landlord with the payments already made to the tenant, is \$2400.00.

Again, based on the evidence before me, I find that the rent owed by the tenants up to and including June 1 was \$1720.00 calculated as follows:

Arrears to April 30	\$1140.00
May rent	290.00
June rent	290.00

however, the debt to the landlord was offset by the tenant owed to the tenant by the landlord.

Accordingly, I find that as of the date of the notice to end tenancy there were no arrears of rent. The 10 Day Notice to End Tenancy for Non-Payment of Rent dated June 6, 2014, is set aside and is of no force or effect. The tenancy continues until ended in accordance with the legislation.

As of June 30 the balance owed to the tenant by the landlord was \$1080.00. Pursuant to section 65(2) an arbitrator may order that any amount owed to a tenant by a landlord may be deducted from any rent due to the landlord. The sum of \$590.00, the amount owed for the July and August rent, is deducted from the amount owed by the landlord to the tenant, leaving a balance of \$490.00 owed to the tenant.

As the tenants were successful on their application they are entitled to reimbursement from the landlord for the \$50.00 fee they paid to file it.

I grant the tenants a monetary order in the amount of \$540.00. Pursuant to section 65(2) \$290.00 may be deducted from the September rent and \$250.00 may be deducted from the October rent in satisfaction of this claim.

Conclusion

- a. The 10 Day Notice to End Tenancy for Non-Payment of Rent dated June 6, 2014, is set aside and is of no force or effect. The tenancy continues until ended in accordance with the legislation.

- b. A monetary order in favour of the tenants have been made. This is to be satisfied by deductions from rent coming due as set out in the decision.

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 20, 2014

Residential Tenancy Branch

