Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TREPANIER MHP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, FF

Introduction

This conference call hearing was scheduled in response to an Application for Dispute Resolution (the "Application") made by the Tenant to cancel a notice to end tenancy for unpaid rent or utilities and to recover the filing fee for the cost of making the Application.

An agent for the Landlord and the Tenant appeared for the hearing and provided affirmed testimony during the hearing as well as written evidence in advance of the hearing. The hearing process was explained and the participants were asked if they had any questions.

The Landlord confirmed personal receipt of the Tenant's Application and Notice of Hearing documents for these proceedings in accordance with the Manufactured Home Park Tenancy Act (the "Act"). The parties also confirmed receipt of each other's written evidence.

At the start of the hearing the Landlord's agent made an oral request for an Order of Possession if the notice to end tenancy were to be upheld. This request was also made in the Landlord's written submissions.

Issue(s) to be Decided

- Did the Tenant have authority under the Act to withhold rent?
- Is the Landlord entitled to an Order of Possession?

Background and Evidence

This dispute involves a long history of issues between the Landlord and Tenant during which time several hearings have taken place and several decisions and amended decisions have been rendered by the Residential Tenancy Branch.

While I have not sought to document a complete and extensive history of the disputes and the hearings that have taken place to date, I have alluded to a brief history of the events in order to provide some applicable background to this decision. Therefore, it is useful that this decision be read in conjunction with previous decisions that have taken place between the parties and the file numbers relating to these previous hearings are detailed on the front page of this decision.

This tenancy started when the Tenant's mother took occupancy of the rental site in 1987. The Tenant took occupancy of the same rental site through the purchase of the manufactured home from her mother in April, 2002.

No written tenancy agreement was completed by the Landlord with either the Tenant or the Tenant's mother. The Tenant testified that the rent amount payable under the verbal tenancy agreement at the time she entered into the tenancy in 2002 was $320.00 which was payable on the first day of each month.

First Dispute

The Tenant for this Application was part of dispute resolution proceedings filed on May 18, 2010 with several other joint Tenant Applications. The issues in the Applications were heard by way of written submissions and a final amended decision was rendered on December 23, 2010.

The written decision of the Arbitrator (referred to at the time as a Dispute Resolution Officer) detailed the Tenant's case and explained that the Tenant sought monetary compensation for alleged illegal rent increases citing the fact that the Landlord was seeking to include sewage disposal, parking, snow removal and water in the rent increases when these should be covered by the rent payable under the verbal tenancy agreement.

The Arbitrator considered the written evidence for the hearing and made a number of findings, one of which was that the joint Applications had failed to prove that sewer was included in the rent amount payable by each Tenant. However, the Arbitrator made a finding that some of the Tenants in the joint Application were eligible to have their Notice of Rent Increase (the "NRI") set aside.

In relation to the Tenant's specific Application as part of the joint Applications, the Arbitrator found that the NRI relating to May 1, 2003 and May 1, 2004 were **valid** and that the Tenant had failed to establish that either rent increase was unlawful. In this decision, the Arbitrator dismissed the Tenant's Application **without leave to re-apply**.

However, in January, 2011, the Tenant decided that she was entitled to make deductions from her rent in accordance with the December 23, 2010 decision which only allowed specific residents of the manufactured park to make deductions, but not the Tenant. The Tenant was issued with a notice to end tenancy for unpaid rent which she disputed. As a result, a hearing was scheduled to be heard on March 2, 2011 by conference call.

Second Hearing

The Arbitrator who conducted the hearing rendered a final amended decision on April 14, 2011. The Arbitrator found that the Tenant was seeking to address the services that were included in her rent and that this issue had already been determined in the previous hearing detailed in the December 23, 2010 decision.

During this hearing the Tenant also argued that her rent reverted back to the rate of rent based on the last valid NRI in 2007, or in the amount of $358.00 and that she had started the process of partially deducting a total overpayment of $676.00 from her rent payable to the Landlord.

The Arbitrator for this hearing determined that the Tenant had no right to determine that her monthly rent had reverted to $358.00 per month and found that the monthly rent for the pad site is $398.00 per month effective September, 2010. However, the Arbitrator decided that the situation and circumstances, as outlined in findings, gave reason for the Notice to be set aside.

The Arbitrator also ordered that the parties use the standard terms, outlined in the Manufactured Home Park Tenancy Regulation, as their written tenancy agreement and that any changes to the standard terms must comply with Section 14(2) of the Act.

Third Hearing

A third hearing took place on June 28, 2011 to hear the Tenant's Application to dispute another notice to end tenancy for unpaid utilities. The Arbitrator noted that rent payable at the time was $398.00. The Tenant failed to pay sewer charges because she argued that the Landlord had not provided her with a demand letter and that as the tenancy was a verbal agreement there was no requirement for the Tenant to pay sewer charges; the Tenant further argued that there was no contractual or statutory basis to pay the Landlord for utilities. The Arbitrator noted that the Tenant had submitted a large amount of written evidence, including Council Committee Reports, copies of letters from the municipality, copies of communications between the parties and evidence relating to rent increases as

well as written testimony. This written evidence was provided to support the Tenant's claim that she should not have to pay sewer charges for this tenancy.

In relation to this hearing, the Arbitrator rendered a decision on June 28, 2011 which cautioned that the decisions of an Arbitrator are binding, final and cannot be overturned or altered in the current hearing. The Arbitrator heard the parties' evidence and made a finding that the Tenant is responsible for paying for her share of these services and this was based on a previous finding that sewer and water usage was not a utility included in the Tenant's rent. However, the Arbitrator cancelled the notice to end tenancy because of a lack of evidence to support the demand letter for the unpaid utilities.

Current Hearing

The Landlord's agent for this hearing testified that since the latest decision of June 28, 2011, the Tenant has been paying the required rent amounts, including rent increase amounts which were provided to the Tenant through NRI forms each year. However, for some unknown reason, the Tenant failed to pay the full amount of rent for July, 2014 in the amount of $449.00, which is the amount of current rent payable under the agreement.

The Landlord's agent testified that the Tenant only paid $280.00 on July 1, 2014, leaving an outstanding balance of $169.00. As a result, the Landlord served the Tenant with a two page 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on July 8, 2014 by posting it on the Tenant's door. The Notice was provided in written evidence and shows that an amount of $169.00 was due on July 1, 2014 and the effective date of vacancy of the Notice is July 19, 2014. The Notice is on an older version of the form.

The Landlord's agent testified that the Tenant has also paid $280.00 each for August and September 2014 rent and she does not know or understand why the Tenant has sought to make this deduction from her July, 2014 rent, particularly because the Tenant had been paying the required rent since the last hearing in 2011 and is fully aware of her rights and obligations in regards to the rent increase provisions. In her written evidence, the Landlord's agent writes that she has received the Tenant's written evidence in which the Tenant "…seems to be quoting all kinds of Acts from 1996, 1999 and 2000, most of them I am sorry to say go above my understanding". The Landlord's agent stated that she is unable to understand how the Tenant is able to fight the issue of the rent increases when this issue has already been dealt with several times in previous hearings.

The Tenant acknowledged receipt of the Notice and filed to dispute the Notice on July 9, 2014. The Tenant was invited to explain in her oral testimony why she had not paid the full amount of rent for the last three months.

The Tenant testified that most of the NRIs served to her were illegal and not enforceable. The Tenant submitted that the Landlord provided fraudulent information which was inaccurate and had been misrepresented on the NRI forms as well as during the previous hearings. The Tenant submitted that the NRI forms served to her save for a few, do not comply with the Legislation and the details documented on the NRI make changes to the verbal tenancy agreement which the Landlord is not allowed to do under the Act.

The Tenant was asked to expand on this submission but stated that her submissions were in her written evidence. The Tenant's written evidence consists of a total of 108 pages, the first 20 pages detailing extensive small font submissions including vast sections of the Legislation concerning the Act, policy guidelines and the supporting guide book.

The Tenant was informed that the purpose of this hearing was for her to explain her written evidence and how this specifically related to her withholding rent for the last three months so that the Landlord would also be able to understand the arguments the Tenant was relying on to cancel the Notice. I also explained to the Tenant that my role was not to decipher and select the relevant pieces of the Tenant's evidence to determine how they apply to her oral submissions during the hearing; such a role would more appropriately be performed by an advocate and not an independent Arbitrator. The Tenant explained that she would be willing to read the entire submission to me but that her submissions were explained in the written evidence. The Tenant was informed that the Respondent has a right to know what evidence the Applicant relies on and how this relates to their argument. A Respondent also has the right to clear and understandable material which can be explained during a hearing if necessary.

The Tenant testified that her written submissions showed why she should not be paying the current amount of rent and that this should be reverted back to $280.00, which is an amount that pre-dates the time the Tenant took occupancy of the rental unit. When the Tenant was asked to explain why she only paid $280.00, the Tenant stated that this was the only legal amount that she was required to pay and that had been agreed to for this verbal tenancy.

When the Tenant was asked to provide further explanation of this, the Tenant submitted that as the tenancy is a verbal agreement, the Landlord has no legal right to make a change to the rent amount as changes to a tenancy agreement can only be made with the consent of both parties.

In the Tenant's written evidence, which comprises of the Tenant's extensive written submissions, NRI forms (some of which predate the Tenant's tenancy) and material relating to the municipal utility requirements, the Tenant seeks to put forward legal

arguments as to why the NRIs issued to her and her mother are not enforceable. The Tenant testified that her written submissions clearly outline her case for the previous Arbitrator's decisions to be overturned and that Arbitrators have a duty to enforce the Act and not be hindered by previous incorrect decisions.

The Tenant submitted that if I were to overturn the previous decisions, based on the evidence she had provided which clearly shows that they should be overturned, then this means that every NRI issued to the Tenant and to the Tenant's mother were illegal.

When the Tenant was asked as to why she had paid the required amount of rent and the increase since the last decision was rendered in 2011 up until the end of June, 2014, the Tenant alleged that she paid these amounts under duress from the Landlord; this was contested by the Landlord's agent.

I concluded the hearing by asking the parties if they had any further oral submissions to make and none were made.

Analysis

The Notice served to the Tenant was on a format which is not the current form used by a Landlord to serve to the Tenant. As a result, I consulted Policy Guideline18 to the Act and Section 10(2) of the Act, which provides for the use of forms previously prescribed by the Act prior to the adoption of the current form.

These provisions explain that a form not approved by the Director is not invalid if the form used still contains the required information and is not constructed with the intention of misleading anyone.

As a result, I find that the two page Notice served to the Tenant, which the Tenant confirmed receipt of, contained the required information without misleading the Tenant. Furthermore, the Tenant exercised her rights to cancel the Notice within the time limits stipulated by Section 39(4) of the Act, supporting the fact that the Notice did not impede or disadvantage the Tenant in any way.

The core of the Tenant's argument and written submissions rely on the fact that previous determinations made in relation to the issuing and enforcement of NRIs were incorrect and unenforceable. The Tenant intends to have her rent returned to an amount that predates her tenancy and submits that because there was an error made in law regarding the issuing of the NRIs which were subject to the previous dispute resolution proceedings, then any subsequent NRIs are of no effect and unenforceable.

While I read through the Tenant's written evidence, I find that the arguments presented by the Tenant are related to the fact that the Landlord had no grounds for the NRIs to be issued either before or during her tenancy. This is supported by the fact that she desires and has paid rent for the last three months for an amount that was payable as rent before she took occupancy of the rental site.

The issue of whether the NRI forms provided to the Tenant at the onset of her tenancy were already decided in the decision of the Arbitrator dated December 23, 2010. The Arbitrator dismissed the Tenant's Application **specifically without** leave to re-apply. The Tenant then sought in two further hearings to put forward similar arguments as to why she should not have to pay rent increases, but again the Arbitrators refused to hear the Tenant's evidence in respect of the rent increases.

In the decision dated June 28, 2011, the Arbitrator made a finding that the Tenant was responsible for paying her share of the utilities, yet the Tenant again seeks to argue and overturn this decision with legal reasoning in this hearing.

I have not examined and assessed the validity of the Tenant's written evidence, as to do so would violate the principles of res judicata as these submissions are related to the Tenant's arguments that the previous decisions erred in law.

The doctrine of *res judicata* prevents a litigant from obtaining another day in court after the first lawsuit is concluded by giving a different reason. The rule provides that when a court of competent jurisdiction has entered a final judgment on the merits of a cause of action, the parties to the suit are bound not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose. A final judgment on the merits bars further claims by the same parties based on the same cause of action.

Res judicata prevents a plaintiff from pursuing a claim that already has been decided and also prevents a defendant from raising any new defence to defeat the enforcement of an earlier judgment. It also precludes relitigation of any issue, regardless of whether the second action is on the same claim as the first one, if that particular issue actually was contested and decided in the first action.

It would have been more appropriate for the Tenant to have exercised her rights and remedies available to her after receiving the decision dated December 23, 2010 if she did not agree with the findings, rather than continuing to deduct rent of her own accord.

Furthermore, in the amended decision of the Arbitrator dated April 14, 2011, the Arbitrator stated:

"I caution the tenant that the payment of rent is a material term of the tenancy and the most minor breach of this term grants the other party the right to end the tenancy. Therefore, the tenant should exercise extreme caution before making the decision to not pay rent without an order of the director".

[Reproduced as written.]

Section 20(1) of the Act states that a Tenant must pay rent when it is due under the tenancy agreement whether or not the Landlord complies with the Act, the regulations or the tenancy agreement, unless the Tenant has a right under the Act to deduct all or a portion of the rent.

The definition of a tenancy agreement as outlined in the Act includes an agreement which may be oral and express or implied in nature. While the Act does provide that tenancy agreements should be in writing, Section 12 of the Act stipulates that the standard terms apply to each tenancy whether or not it is in writing.

The standard terms of a tenancy agreement are documented in the Manufactured Home Park Tenancy Regulation under the 'Schedule' section. Point 3(a) states that the requirement for a change or addition to the tenancy agreement to be agreed to in writing does not apply to a rent increase given in accordance with the Act. Therefore, it follows that the rent increase provisions of the Act still apply to tenancy agreements that are not in writing.

The Act does allow a renter to deduct money from their rent if they have authority under the Act to do so. However, the ability to make a deduction can only be exercised when that authority under the Act has been determined. In this case, the Tenant has no authority under the Act to deduct rent.

Therefore, I find that the Tenant deducted her rent to an amount that predated her tenancy based on reasons which she had an opportunity to present during a previous hearing where she was unable to prove this case. This was documented in writing to the Tenant in a previous decision and the Tenant was cautioned about continuing this course of action in the future.

As a result, I find that the Tenant had no authority under the Act to withhold $169.00 from her last three rent payments that were due under the tenancy agreement. Therefore, the Notice is upheld and remains in effect.

Section 48(1) of the Act states that if a Tenant makes an Application to dispute a Notice and the Notice is upheld, the Arbitrator must grant an Order of Possession if the Landlord makes an oral request during the hearing.

As the Landlord made an oral request, I grant the Landlord an Order of Possession. As the effective date of vacancy on the Notice has passed, the order is effective two days after service on the Tenant. However, I would suggest the Landlord give the Tenant a reasonable amount of time for the Tenant to remove her manufactured home from the site before considering the enforcement of the order.

As the Tenant has not been successful in cancelling the Notice, I dismiss her claim for the return of the filing fee for the cost of making the Application.

Conclusion

For the reasons set out above, I dismiss the Tenant's Application in its entirety **without** leave to re-apply.

The Landlord is granted an Order of Possession which must be served to the Tenant and if the Tenant fails to vacate the rental site in accordance with the order, the order may be enforced in the Supreme Court as an order of that court.

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: September 22, 2014

Residential Tenancy Branch