



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Stonecliff Properties Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant; her advocate and the landlord's agent.

At the outset of the hearing the landlord confirmed they received rent from the tenant on July 3, 2014 and as such the Notice to End Tenancy for Unpaid Rent issued by the landlord on July 2, 2014 is null and void. As such there is no further need to adjudicate the tenant's Application to cancel the Notice. The tenant requests that he still be entitled to recover the filing fee.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 60, and 65 of the *Manufactured Home Park Tenancy Act (Act)*.

Background and Evidence

The tenant submits the tenancy began in October 2007. The parties agree the monthly rent is \$214.50 due on the 1st of each month. The landlord submits that the current landlord purchased the park in November 2013.

The tenant submits that prior to the new ownership the tenants were allowed to pay rent to the on-site manager. However since November 2013 they have been required to mail the landlord the rent each month using Canada Post and sending it to the landlord's address in a very distance part of the province.

The tenant submits that even though he took every effort to meet his obligations to the landlord by mailing his rent cheque to the landlord on June 26, 2014 he should not be held responsible for the late payment because Canada Post did not deliver the cheque until after it was due.

The landlord testified that a rent receipt was issued to the tenant and sent by mail on June 3, 2014. The tenant submitted in his Application that he received the landlord's 10 Day Notice to End Tenancy on July 7, 2014, the same day that he applied to dispute the Notice. The 10 Day Notice was dated July 2, 2014.

Analysis

Section 65 of the *Act* allows the director to order payment or repayment of a fee required under Section 52(2)(c) [starting proceedings] by one party to a dispute resolution proceeding to another party.

Usually this recovery is granted when the Applicant is successful in making their claim as submitted in their Application. In the case before me the parties resolved the dispute prior to the hearing date and as such no decision was made on the tenant's original claim.

However, if a landlord provides no other options for a tenant to pay rent than to do so through a third party and the rent is delayed by that third party unbeknownst to the tenant, the potential for the tenant to lose his tenancy exists. If a tenant failed to submit an Application for Dispute Resolution and the rent was not received by the landlord within the required time frames required the landlord may have been entitled to end the tenancy and obtain an order of possession.

In addition, as the tenant received the 10 Day Notice to End Tenancy and applied to dispute it on July 7, 2014 after being sent by the landlord on July 2, 2014 I find that it is reasonable to assume that the receipt that was sent to the tenant on July 3, 2014 was not received by the tenant prior to submitting his Application for Dispute Resolution.

As such, I find that to ensure his tenancy did not end as the result of the third party's delay the tenant had little choice but to submit an Application for Dispute Resolution and pay the required fee. As a result I find the tenant has suffered a loss that could have been prevented had the landlord allowed alternate methods of payment to the tenant or contacted the tenant directly and sooner to advise him that payment had been received.

Conclusion

Based on the above, I find the tenant is entitled to monetary compensation pursuant to Section 65 in the amount of **\$50.00** comprised of the fee paid by the tenant for this application. I order the tenant may deduct this amount from a future rent payment.

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 10, 2014

Residential Tenancy Branch

