



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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

REVIEW HEARING DECISION

Dispute Codes OPR, MNR, FF

Introduction

This dispute resolution process originated upon the landlord's application under the *Manufactured Home Park Tenancy Act (the "Act")* for an order of possession for the manufactured home pad site due to unpaid pad rent pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"), a monetary order for unpaid pad rent, and for recovery of the filing fee paid for this application.

The landlord's application was successful, as the original Arbitrator in a Decision of August 19, 2014, in the absence of the tenants, granted the landlord an order of possession for the manufactured home site due to unpaid rent, a monetary order for unpaid rent, and for recovery of the filing fee paid for their application.

The tenants applied for a review consideration of that original Decision based upon their contention they were unable to attend the original hearing because of circumstances that could not be anticipated and were beyond their control and that they had new and relevant evidence that was not available at the time of the original hearing.

The tenants' application for review consideration was successful as they were granted a new hearing in a Decision by another Arbitrator, dated August 29, 2014, and the Decision and orders of August 19, 2014, were suspended pending the review hearing. This was the new hearing on the landlord's original application for dispute resolution ordered by that Arbitrator.

The landlord's agents and the tenants attended the new hearing, and the procedure for the hearing was discussed. The parties were informed that the merits of the landlord's original application for dispute resolution would be considered once more, and that after the conclusion, the landlord's original Decision of August 19, 2014, would be confirmed, varied, or set aside.

At the new hearing, the parties were provided the opportunity to present their evidence orally, refer to relevant documentary evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Procedural and preliminary matters-At the outset of the hearing, the landlord submitted that they had not received the Decision of August 29, 2014, resulting from and issued on the tenants' successful application for review consideration, or the Notice of Hearing for this hearing, as ordered by the Arbitrator in the August 29 Decision. The landlord submitted further that they only found out about this hearing during a telephone call to the Residential Tenancy Branch ("RTB") and were given the call-in codes for the hearing.

In response to my question, the tenants submitted they served the August 29, 2014, Decision and Notice of Hearing by attaching the documents to the address listed on the landlord's original application for dispute resolution, which is also the address listed for service of documents on the landlord's 10 Day Notice which was submitted in evidence by the landlord. The landlords stated that this was only their mailing address and not the address for attaching documents for service.

I found that as the tenants attached their documents to the door on the address listed in the landlord's application and Notice for service of documents, the tenants properly served the landlord with the notice of this hearing and the Decision from the tenants' application for review consideration.

The landlord, however, was provided the opportunity for an adjournment of this hearing in order to receive a copy of the August 29, 2014, Decision, and they declined, as they wanted to proceed with the hearing.

Issue(s) to be Decided

Should the Decision and orders of August 19, 2014, be confirmed, varied, or set aside?

If the Decision of August 19, 2014 is not confirmed, is the landlord entitled to an order of possession for the manufactured home site, a monetary order for unpaid rent, and for recovery of the filing fee paid for this application?

Background and Evidence

The undisputed evidence was that the landlord issued the tenants a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"), on June 6, 2014, by attaching it to the tenants' door on that date. The Notice listed unpaid manufactured home site rent of \$2215.

What transpired after the tenants received the Notice was the tenants' application for dispute resolution, seeking cancellation of the Notice and monetary compensation. The hearing on the tenants' application took place on August 6, 2014, before another

Arbitrator. That Arbitrator, however, did not issue a Decision until August 20, 2014, a day after the hearing and Decision on the landlord's application seeking enforcement of the Notice, dated August 19, 2014, as mentioned. In that Decision, the Arbitrator set aside the June 6, 2014, Notice, as she found that the tenants had no rent arrears as of the day that the Notice was issued due to a contract for work between the landlord and the tenants, leaving a balance of \$2400 owed by the landlord to the tenants. Additionally, the Arbitrator in the August 20, 2014, Decision found that the landlord, as of June 30, 2014, still owed a balance of \$1080 to the tenants, and that the tenants did not owe the monthly pad rent of \$290 for July and August 2014, each, through the month of the hearing, leaving a total balance of \$540 owed to the tenants through August 2014. The Arbitrator, as a result, issued the tenants a monetary order in the amount of \$540, allowing them to redeem that amount by withholding the September rent of \$290, and making a deduction of \$250 from the October rent.

In response to my question at this hearing, the landlord submitted that they were not mailed that Decision of August 20, 2014, but confirmed that they received the August 20, 2014, Decision on September 3, 2014, when it was telefaxed to them by the RTB. The landlord confirmed further that they have not filed their own application for review consideration regarding the August 20, 2014, Decision, and submitted further that they assumed that the applications of both the tenants and the landlord would be considered at this review hearing on the landlord's application for dispute resolution.

Analysis

The issue in both the tenants' application and the landlord's application centers around the 10 Day Notice, dated June 6, 2014, wherein the landlord alleged the tenants owed unpaid monthly pad rent. Both parties filed an application, with the tenants seeking a cancellation of that Notice and monetary compensation, and the landlords seeking enforcement of that Notice and monetary compensation; however, the applications were scheduled separately on different dates before different Arbitrators.

The hearing on the tenants' application, as their application was filed before the landlord's application, took place prior to the hearing on the landlord's application, and the Decision of August 20, 2014, on the tenants' application cancelled the 10 Day Notice of June 6, 2014, and granted the tenants rent credits and monetary compensation.

I therefore find that the merits of the landlord's June 6, 2014, 10 Day Notice, were previously decided upon by another Arbitrator prior to the hearing on their application on August 19, 2014. As another Arbitrator cancelled the Notice of June 6, 2014, and granted a monetary award to the tenants, I cannot re-decide that issue as I am bound by this earlier Decision, under the legal principle of *res judicata*. I therefore **dismiss** the landlord's application seeking an order of possession for the manufactured home site and a monetary order for unpaid home site rent.

I note that the landlords were advised that as they had not filed their own application for review consideration of the tenants' favourable Decision of August 20, 2014, that matter was not before me and I could not now consider both parties' original applications for dispute resolution.

Conclusion

Due to the above, the landlord's application is dismissed, without leave to reapply.

As I have dismissed the landlord's application requesting an order of possession for the manufactured home site and a monetary order for unpaid rent, I set aside the Decision of August 19, 2014, of the original Arbitrator granting the landlord's application for the order of possession and a monetary order. The Decision and orders of August 19, 2014, in favour of the landlord are now of no force or effect.

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: October 27, 2014

Residential Tenancy Branch

