



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Skore Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNDC, O, DRI, FF

Introduction

In the first application, by filing date, the tenants seek to cancel a ten day Notice to End Tenancy for unpaid rent served October 11, 2014 and for more time to do so. They also seek to dispute an alleged wrongful rent increase and for a monetary award for rent overpayments. Last, they seek an order that the landlord, the respondent Mr. G.S.G., comply with the law and tenancy agreement in some unspecified manner.

In the second application the landlords S.H. Ltd. and Mr. P.S.G., the son of the respondent Mr. G.S.G., seek an order of possession pursuant to the Notice and a monetary award for unpaid rent and late fees.

Issue(s) to be Decided

Who is the landlord and who is the tenant? Does the relevant evidence presented at hearing show on a balance of probabilities that either party is entitled to any of the relief requested?

Background and Evidence

The manufactured home site is located in a manufactured home park of 45 to 47 sites. This tenancy started between August 5 and 10, 2014 when the tenants placed their home on the site and first paid rent.

There is no written tenancy agreement between the parties.

Mr. D.R. claims that he and his common law wife, the co-applicant Ms. J.G., are tenants together and that the monthly rent was negotiated in July 2014 to be \$560.00 in a conversation between Ms. J.G. and the respondent Mr. G.S.G. He testifies that on

August 5, 2014 he and Ms. J.G. paid the \$560.00 rent. The landlord's material shows a receipt issued by Ms. N., the park manager dated August 5th indicating a cash payment of \$560.00 on that date for "Pad Rent – August 2014"

Mr. D.R. testified that between August 5 and August 10, the applicant Mr. P.S.G. came around and said the rent was \$600.00 not \$560.00. On August 10th, the tenants paid an additional \$40.00 and receive another receipt marked "Additional rent Paid to (Mr. P.S.G)" and "Rent – Fully paid for August 10 to September 10, 2014."

Mr. D.R. claims the additional \$40.00 was an unlawful rent increase.

The tenants paid \$600.00 again on September 10th and received a receipt marked "Pad Rent – Sept. 10 – Oct. 10, 2014." On that same day the tenants provided a note with the payment indicating "#2 PAD RENT FROM SEPTEMBER 10TH – OCTOBER 10TH, 2014, SIX HUNDRED DOLLARS..."

The rent was not paid on October 10th. The landlord(s) issued a ten day Notice to End Tenancy dated and served October 11, 2014 claiming \$600.00 was due on October 10, 2014. It was signed by Mr. G.S.G

On October 22nd the tenants paid only \$430.00, claiming their rent was only \$560.00 and that they were entitled to recover the two \$40.00 overpayments of rent in August and September plus \$50.00 Ms. J.G. had paid a neighbour to reconstruct a fence that had ben removed to facilitate the placing of the tenants' home on the site back in early August.

Mr. D.R. testified that all the pad rents in the park are \$560.00.

The alleged landlord Mr.P.S.G. testifies the park is owned by the limited company, S.H. Ltd. and that he and his father own the company. He says that it was he and not his father Mr. G.S.G. who negotiated the tenancy with Ms. J.G. in July and that the rent was always stated to be \$600.00 per month.

He says that Mr. D.R. was not approved as a tenant and is not permitted to live in the home. He testifies that rent was originally due on the 5th of each month but it was later agreed that it would be paid on the 10th. Nevertheless, he claims a \$25.00 "late fee" for rent from August, September and October. In his written materials he claims the rent was due on the 1st of each month.

He testified that not all of the park rents are \$560.00.

Mr. P.S.G in his written material states that in August the tenants paid \$560.00 to the manager “but did not pay \$600 plus a security deposit of \$300, as agreed with (J. the park manager).” His statement goes on to say that he called Mr. D.R. and explained to him that any new tenants in the park are required to pay \$600.00, not \$560.00. He notes the \$600.00 payment in September.

Analysis

I grant the request to extend time for applying to cancel the Notice. The extension is a matter of four days and the landlord is not prejudiced by it.

There is no written tenancy agreement to indicate who the landlord of this park is. Mr. D.S.G. states the park is owned by the limited company. I find that the landlord is S.H. Ltd.. The tenancy was negotiated with Ms. J.G. only. I find that she is the sole tenant of this manufactured home site and not she and Mr. D.R. together. He is mere occupant.

The landlord has place itself in a very difficult spot by not having a written tenancy agreement. Leaving aside that fact that the *Manufactured Home Park Tenancy Act* (the “Act”) mandates that a landlord prepare a written tenancy agreement, without one the landlord must rely on mere oral testimony of events and documents of debatable corroborative influence to prove the terms of that tenancy agreement. Section 6 (3) of the *Act* makes it clear that s term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under it. An oral agreement is by its very nature an agreement not expressed in a manner that clearly communicates the rights and obligations under it.

In addition, the landlord has failed to call the park manager J as a witness. Her testimony about what was said or not said when she issued the August rent receipt for \$560.00 as pad rent for August, would seem to be a vital piece of evidence for the landlord.

It should be noted that the evidence of Mr. D.R. suffers from the same fault. Ms. J.G. who apparently negotiated the original arrangement should have given evidence. The second hand evidence of Mr. D.R. about the creation of the tenancy in July, is merely that: second hand evidence, and of significantly less value than that Ms. J.G. might have given.

I find that the original rent arrangement was for \$560.00 per month. I doubt that the tenants would have tendered \$560.00 on August 5th and the park manager would have given a receipt marked "Pad Rent – August 2014" had it been clear the rent was \$600.00. It is most likely, and in accordance not just with Mr. D.R.'s testimony but with Mr. P.S.G.'s written statement, that Mr. P.S.G. intervened after that to correct what he considered to have been a mistake about the amount of rent. The \$560.00 rent may have been a mistake in his view, but I find that it was the amount negotiated in July and is the current rent. Mr. P.S.G. on behalf of the landlord could not change it unilaterally except subject to the rent increase rules imposed by the *Act* and regulations.

In light of this finding, the ten day Notice to End Tenancy dated October 11, 2014 must be cancelled. It demands payment of \$600.00 when only \$560.00 (or less) was due and is therefore fatally defective.

I find that notwithstanding what might have been the original agreement, the due date for rent was agreed to be the tenth day of each month, as admitted by Mr. P.S.G. in his testimony. Further, that is the date indicated in the landlord's ten day Notice as the date rent is due.

The tenant Ms. J.G. was entitled to reduce the October rent by \$80.00 for the two \$40.00 overpayments made for August and September. She was not entitled to unilaterally reduce rent by the \$50.00 she considered she should not have paid to the neighbour for fence reconstruction. Section 20 (1) of the *Act* is clear, 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 this *Act* to deduct all or a portion of the rent. The tenant had no such right to deduct the fence money in this case. She is free to make application to recover that money and if successful may be allowed to deduct any awarded amount from rent.

The amount due on October 10th, 2014 was therefore \$480.00. The tenant paid \$430.00 and so owes \$50.00. If that amount of arrears is not paid forthwith upon receipt of this decision, along with any amount that might have come due on November 10th and remains unpaid, the landlord is free to issue another ten day Notice to End Tenancy and pursue its claim for overdue rent if it remains unpaid.

A landlord may claim a late rent fee if the tenancy agreement provides for it and if it is a reasonable charge and not a penalty. There is no written tenancy agreement here. The landlord may not automatically charge a late fee. I dismiss that portion of its claim.

Section 17 (2) of the *Act* provides that a landlord must not require or accept a security deposit in respect of a manufactured home site tenancy. I find that Mr. P.S.G., having spent twenty years in the business well knows this. His attempt to charge these tenants with a \$300.00 security deposit indicates a predilection to evade the law and would have damaged his credibility had I needed to assess it in this case.

A tenancy gives a tenant an exclusive right to possession of the site subject only to a very limited right of the landlord to enter upon the property. A landlord proposing to restrict who the tenant allows to occupy that property must do so on a reasonable basis and in very clear language. The landlord has not done so here and I find that the tenant is not restricted in whom she permits to occupy the home with her.

The *Act* does not contemplate a “probation period” for tenants. Once a tenancy has started, a landlord may only end for a reason set out in the *Act*.

I decline to grant the tenant a compliance order. There were no grounds shown or evidence presented at this hearing to justify one.

Conclusion

The tenant’s application is allowed in part. The landlord’s application is allowed to the extent that the tenant was not entitled to reduce the fence payment from rent. In these circumstances I decline to award recovery of either’s filing fee.

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: November 28, 2014

Residential Tenancy Branch

