



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TERRACE PLACE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

DRI, MNDC, OLC, FF, O

Introduction

This hearing dealt with the tenants' application pursuant to the *Manufactured Home Park Tenancy Act* (the *Act*) for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 60;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement, pursuant to section 55;
- an order regarding a disputed additional rent increase, pursuant to section 36;
- other unspecified remedies; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 65.

The landlord JH ("landlord") and the two tenants, LJ ("tenant") and RZ, attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses. The landlord confirmed that she is the park manager for the landlord company ("landlord TP") named in this application, and that she had authority to represent landlord TP as an agent at this hearing.

The tenant testified that the landlords were served with the tenants' application for dispute resolution hearing package ("Application") on January 27, 2015, by way of registered mail. The landlord confirmed receipt of the tenants' Application. In accordance with sections 89 and 90 of the *Act*, I find that the landlords were duly served with the tenants' Application.

During the hearing, the tenants withdrew their application for "other" unspecified relief. Accordingly, this portion of their application is withdrawn.

Issues to be Decided

Are the tenants entitled to a monetary award for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Are the tenants entitled to an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement?

Are the tenants entitled to an order regarding a disputed additional rent increase?

Are the tenants entitled to recover their filing fee for this Application from the landlords?

Background and Evidence

The landlord testified that this month to month tenancy began on October 1, 2003. Monthly rent in the current amount of \$320.00 is payable on the first day of each month. Although the tenancy agreement indicates that rent was previously \$250.00 per month at the beginning of this tenancy, the tenants confirmed that they were issued legal notices of rent increase which raised their rent to \$320.00 as of January 1, 2015. The tenants own a mobile home which is located on a rented manufactured home site.

Landlord TP assumed control of all existing tenancies from the previous landlord on November 8, 2014. The tenants were previously employed as park managers at the park where their manufactured home site is located. The tenants received free rent for this employment from September 3, 2003 to November 30, 2014. As of December 1, 2014, the tenants began paying rent of \$310.00 per month and as of January 1, 2015, the tenants began paying rent of \$320.00 per month, as per the latest notice of rent increase.

The tenants do not currently reside in the mobile home and it is listed for sale. According to their tenancy agreement, the tenants must obtain approval from landlord TP when selling their mobile home and before any new tenancies begin at the manufactured home site.

The tenant testified that potential buyers, S ("buyers"), agreed to purchase the tenants' mobile home on the basis that the monthly rent rate of \$320.00 per month remained the same at the manufactured home site and no processing fees would be charged for their application. The tenants provided documentary evidence to support the above information, including a contract of purchase and sale. However, as per the tenants' evidence, the landlords advised the buyers that they would be required to pay a monthly rental rate of \$470.00 per month and a \$350.00 processing fee before their purchase would be approved by the landlords. The landlord stated that the buyers were told that the rent would be \$435.00 per month, not \$470.00 per month. The buyers then revoked their purchase offer and decided not to purchase the tenants' mobile home, due to the monthly rental rate and the administration fee. The tenants provided an email from the buyers to confirm this fact. The tenants approached the landlords and inquired as to whether they would offer the same rental rate of \$320.00 to these buyers, but the landlords refused. The tenants testified that they did not intend to live in the mobile home or continue their existing tenancy once the mobile home is sold.

The tenants dispute an additional rent increase, which they say is being imposed by the landlords, and they seek an order that the landlords comply with the *Act* and the *Manufactured Home Park Tenancy Regulation* ("*Regulation*"). The tenants stated that the landlords are required to issue a valid notice of rent increase for this manufactured home site. The tenants indicated that rent cannot be increased from \$320.00 to \$470.00, which they say is above the allowable amount permitted by the *Regulation*. The tenants claimed that the buyers were assuming the same tenancy that is currently in place and therefore, rent should remain the same, unless a valid notice of rent increase is issued. The tenants seek to prevent the landlords from imposing a future illegal rent increase on other potential buyers who wish to purchase the tenants' mobile home in the future.

The tenants also seek an order for the landlords to comply with the *Act* and revoke their \$350.00 processing fee. The tenants stated that the landlords are not permitted to charge this processing fee, as it is expressly prohibited by section 15 of the *Act*. The tenants seek to prevent the landlords from imposing a future processing fee on other potential buyers who wish to purchase the tenants' mobile home in the future.

The tenants also seek monetary compensation in the amount of \$320.00 per month from January 6, 2015, until such time as their mobile home is sold. The tenants applied for \$960.00 in compensation, equalling 3 months of rent, based on their estimation at the time, given that their application was filed on January 23, 2015. However, the tenants indicated that they are applying for an amount to cover the entire period until their mobile home is sold, which is unknown at this time. The tenant stated that the buyers would have completed their purchase of the tenants' mobile home by January 6, 2015 and therefore, the tenants would not have had to pay rent after this date.

The tenants testified that any potential buyer of their mobile home will not want to purchase their home because of the high monthly rent and the processing fee being charged by the landlords. The tenants stated that they did not wish to lower the selling price of their mobile home in order to compensate for the higher rent being charged by the landlords.

The landlord stated that the \$435.00 monthly rental rate expressed to the buyers reflected fair market value as compared to other manufactured home sites. The landlord stated that the landlords currently have an application being drafted for the Residential Tenancy Branch for a rent increase above the allowable amount at this manufactured home park. The tenants stated that there is no documentary proof of this fact. The landlord stated that the landlords should not be responsible for the tenants' mobile home not being sold. The landlord indicated that the tenants' mobile home has been listed for sale since August 2014 and the first purchase offer received by the tenants was in December 2014 from the buyers.

Analysis

While I have turned my mind to all the documentary evidence, including miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants' claim and my findings around each are set out below.

Sections 34 and 35 of the *Act* state that a landlord must not increase rent for at least 12 months after either: 1) the date that rent was first established under the tenancy agreement; or 2) the effective date of the previous rent increase. These sections only apply to an existing tenancy. The tenants clearly stated that they intend to sell their mobile home and not to continue their existing tenancy. This is not a continuation of a tenancy which invokes the rent increase rules. Therefore, the landlords are permitted to charge any amount of rent that the market will bear, to new tenants who will be subject to a new tenancy agreement. The landlords have decided to impose a higher rent amount than the \$320.00 currently being charged to the tenants, which they are entitled to do. If potential buyers decide not to purchase the tenants' mobile home for this reason, the landlords are not responsible for the tenants' failure to sell their home. Moreover, the landlords are not responsible for providing the tenants with compensation for the monthly rent of \$320.00 until such time as the tenants' mobile home is sold. The tenants are responsible for paying rent under their tenancy agreement while this current tenancy continues.

Accordingly, the tenants' application to dispute an additional rent increase and for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, is dismissed.

Section 15 of the *Act* states the following:

Application and processing fees prohibited

15 A landlord must not charge a person anything for

- (a) accepting an application for a tenancy,*
- (b) processing the application,*
- (c) investigating the applicant's suitability as a tenant, or*
- (d) accepting the person as a tenant.*

While section 15 of the *Act* prohibits the landlords from charging any processing fees regarding an application for tenancy, this event has not yet occurred. The landlords proposed charging a \$350.00 processing fee to the tenants' potential buyers but this fee was not charged as the buyers rescinded their purchase offer, first.

Because the imposition of this processing fee is a future event which may or may not occur, I cannot impose an order on the landlords at this time. The landlords are strongly cautioned to review section 15 of the *Act* and ensure their actions are in accordance with the *Act* at all times. If the landlords violate any provisions of the *Act* (ie. actually charge a processing fee in violation of section 15 of the *Act*), the relevant party suffering a loss would be free to make an application for dispute resolution at that time.

Accordingly, the tenants' application for an order for the landlords to comply with the Act, regulation or tenancy agreement, is dismissed.

As the tenants were unsuccessful in their application, they are not entitled to recover the \$50.00 filing fee from the landlords. The tenants must bear their own cost of the filing fee.

Conclusion

The tenants' application for "other" unspecified relief is withdrawn.

The remainder of the tenants' application is dismissed.

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: February 18, 2015

Residential Tenancy Branch

