



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: OPR, MNR, MNDC, FF

For the tenant: MT, DRI, FF

Introduction and Preliminary Matters

This hearing was convened as a result of the landlord's application for dispute resolution under the *Manufactured Home Park Tenancy Act* (the "Act").

The landlord applied, on January 22, 2015, for an order of possession for the manufactured home site due to unpaid rent pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"), a monetary order for money owed or compensation for damage or loss and unpaid rent, and for recovery of the filing fee paid for this application.

The tenant filed his own application for dispute resolution on January 30, 2015, seeking an order granting more time to make an application to cancel a notice to end tenancy, to dispute an additional rent increase, and for recovery of the filing fee paid for this application.

The tenant's application was not filed in time to schedule his hearing as a cross application to the landlord's application; however, after a discussion in the hearing, both parties agreed that the tenant's application was similar in nature to the issues contained in the landlord's application and that both applications should be heard at the same hearing.

Further, it appeared from the tenant's submissions in his application that his intent was to also apply seeking cancellation of the Notice. I therefore find it appropriate that the tenant's application be amended, to include a request to cancel the Notice, pursuant to section 57(3)(c) of the Act. The parties were informed that the hearing on February 27, 2015, set to consider the tenant's application, would be cancelled.

At this telephone conference call hearing, which the landlord and tenant attended, the hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter both parties were provided the opportunity to present their

evidence orally, refer to documentary evidence submitted prior to the hearing, make submissions to me and respond to the other's evidence.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

I have reviewed the oral and written evidence of the parties before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

1. Is the landlord entitled to an order of possession for the manufactured home site pursuant to the Notice, a monetary order, and to recovery of the filing fee paid for this application?
2. Is the tenant entitled to cancellation of the Notice, an order cancelling a rent increase, for an order granting more time to make an application to cancel a notice to end tenancy, and to recovery of the filing fee paid for this application?

Background and Evidence

The tenant submitted that he moved into the manufactured home park in 2007, and the landlord submitted that he purchased the park in 2009. There was no written tenancy agreement submitted.

The subject of this dispute is the Notice, which the landlord submitted was served on the tenant on January 2, 2015, by attaching it to the tenant's door, listing an effective move out date of January 15, 2015, and unpaid pad rent of \$377.29 as of January 1, 2015.

The landlord submitted that the monthly pad rent had been increased from \$365.47, which was paid in the year 2014, to \$377.29, starting January 1, 2015. These figures were listed on the Notice of Rent Increase form submitted by the landlord, which listed

the monthly rent of \$365.47 for 2014, and which included the standard increase allowed of 2% plus the inflation rate of .5% for 2015, and a proportional increase for government levies. The landlord submitted that this Notice of Rent Increase was given to the tenant on September 26, 2014.

The landlord submitted further that rather than pay the increased rent of \$377.29, the tenant paid \$375.52 the day following the Notice being issued, leaving a rent deficiency of \$1.77.

The landlord agreed that the tenant paid monthly rent of \$363.74 for 2014, by 12 postdated cheques, but that the tenant also paid \$21 in cash to make up the difference in monthly rent of \$363.74 and monthly rent of \$365.47.

The landlord stated that the payment was made to the park manager; however, there was no receipt of this payment provided by the landlord.

The landlord's relevant documentary evidence included, but was not limited to, the current and 3 previous notices of a rent increase and an overview of pad rents for this tenant since 2011. The overview showed monthly rent for 2011 of \$337.59, increased by 4.3% in 2012, to \$352.10, increased by 3.8% in 2013, to \$365.47, no increase in 2014, and an increase of 2.5% and government levies in 2015, from \$365.47 to \$377.29.

Tenant's response to the landlord's application-

The tenant submitted that he has not paid the monthly rent as shown by the landlord, as every year when he receives a notice of a rent increase, he consulted with the Residential Tenancy Branch ("RTB") to arrive at the correct increased monthly rent and then paid that amount, without protest from the landlord. For instance, in 2012, the monthly rent he paid was \$350.42, not \$352.10 shown by the landlord, and therefore, the increased amount in 2013 he paid was \$363.74, not \$365.47 as shown by the landlord.

As his monthly rent paid in 2013 by 12 postdated cheques was \$363.74, the monthly increase in 2015 was \$11.79, for a total of \$375.53, not \$377.29 as shown by the landlord, according to the tenant. The tenant also calculated what the monthly rent increase should be, which included a total annual rent, plus the standard increase of 2%, plus inflation of .5%, plus the government levies, but all based upon a starting rent of \$363.74, not \$365.47 used by the landlord.

The tenant denied paying extra cash to the landlord or his manager to make up a rent deficiency, and that the landlord accepted all rent payments without mentioning any issues with the payment.

Analysis

Landlord's application-

In the case before me, I find the landlord has not submitted sufficient evidence to prove that the monthly rent was \$365.47 as listed on his notice of the rent increase to be effective beginning January 1, 2015, the figure upon which he based his rental increase calculations. Rather I find the evidence supports that the landlord collected a monthly rent of \$363.74 for all of 2014, as reflected by the tenant's documentary evidence, and which was undisputed by the landlord. I do not accept that the tenant paid \$21 in cash to make up any alleged rent deficiency, as the tenant disputed the testimony of the landlord, and the landlord did not provide a receipt or the

testimony of the manager said to have collected this amount. I do not find disputed verbal evidence to sufficiently prove the landlord's allegations.

I further find that that landlord failed to establish the monthly rent obligation of this tenant from the time the landlord purchased the property. For instance, there was no evidence that the monthly rent was \$337.59 in 2011, and I then was not able to determine whether subsequent rent increases were in the proper amount.

Additionally in this case, I find the legal principle of 'estoppel' applies to this application.

Estoppel is a legal doctrine which holds that one party may be prevented from strictly enforcing a legal right to the detriment of the other party, if the first party has established a pattern of failing to enforce this right, and the second party has relied on this conduct and has acted accordingly. In other words, the landlord established a pattern of accepting the amount of monthly rent paid by the tenant during 2014 and the tenant relied on this to be the proper amount. I find the landlord may not now try to strictly enforce the amount of rent increase claimed by him in his latest notice of rent increase.

Due to the above, I determine by the landlord's actions and conduct, that he accepted the amount of \$364.74 as monthly rent for at least the 12, if not 24 months prior to their notice of rent increase, I find that the landlord is not able to rely on the amount of \$365.47 as listed as the rent on that notice.

As to the landlord's Notice, section 36(5) of the Act, a tenant may deduct from rent the amount of rent increase not complying with the Act. I have therefore determined that the landlord's Notice has not been supported as the tenant paid an increase consistent with the monthly rent having been \$364.74 and not \$365.47 within 5 days of having received the Notice, as required by section 39(4) of the Act.

I therefore cancel the landlord's Notice, dated and issued on January 2, 2015, with the effect that the tenancy continues until it may otherwise end under the Act. As I have cancelled the Notice, I dismiss the landlord's application for an order of possession for the manufactured home site, his request for unpaid rent of \$1.77 for January 2015, and for recovery of the filing fee paid for his application. I do not award the landlord costs for registered mail expenses, as these are expenses not named or allowed under the Act.

As the amount of monthly rent has been in dispute for a number of years, I find it necessary, under section 55(3) of the Act, to make a determination as to the tenant's monthly rent obligation, in order that the parties are provided clarity in the future. As I have determined that the landlord failed to prove that the monthly rent was \$365.47 prior to the rent increase going into effect on January 1, 2015, I find that the monthly rent was \$363.74 through December 31, 2014, and that the landlord is entitled to a rent increase of \$11.78, nearly the figure of \$11.79 as submitted by the tenant, effective beginning January 1, 2015. The calculation takes into

account the standard 2% increase allowed, .5% increase for inflation for the year 2015, and the landlord's proportional increase in government levies as listed on the landlord's notice of rent increase. (*\$363.74 monthly rent as of December 31, 2014, the day prior to the rent increase going into effect, or \$4364.88 current annual rent + 2% of current rent = \$87.71 + .5% inflation increase, or \$21.82 + \$32.29 annual proportional rent increase for government levies as calculated by the landlord = the new annual rent of \$4506.29 less the previous annual rent of \$4364.88 = \$141.41 ÷ 12 months = \$11.78 monthly rent increase. \$363.74 + \$11.78 = \$375.52*)

I order that the monthly pad rent for this tenant to be \$375.52, beginning January 1, 2015.

Tenant's application-

The portion of the tenant's amended application seeking cancellation of the landlord's Notice has been granted, as I have cancelled the Notice.

The portion of the tenant's application seeking to dispute the rent increase is granted as I have determined that the monthly rent, beginning January 1, 2015, is \$375.52, as provided by the tenant.

As the tenant was successful with his application, I grant him recovery of the filing fee of \$50.00 and a monetary order in that amount. The monetary order is enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

The tenant is also authorized to deduct this amount from a future month's rent payment, in satisfaction of this amount and to notify the landlord when he is making this deduction. In the event the tenant deduct \$50.00 from a monthly rent payment, the monetary order is null and void and of no force or effect.

Conclusion

The landlord's application seeking an order of possession for the manufactured home site and a monetary order is dismissed as I have cancelled the Notice.

The tenant's application therefore was successful and he is granted a monetary order in the amount of \$50.00 for recovery of the filing fee paid for this application.

The monthly manufactured home site rent is ordered to be \$375.52, beginning January 1, 2015.

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 16, 2015

Residential Tenancy Branch

