



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF

Introduction

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

The hearing was conducted via teleconference and was attended by both tenants and the landlord's agent.

Prior to the hearing the landlord submitted a substantial volume of evidence regarding their position that they have met the requirements as laid out in a decision dated March 5, 2013 that ordered a rent reduction of \$125.00 for this tenancy until certain specific orders were completed. The tenants had submitted only a copy of the March 5, 2013 decision and a 10 Day Notice to End Tenancy for Unpaid Rent; and other correspondence between the landlord and tenants in regard to the rent reduction.

While the tenants had not applied to deal with the rent reduction itself, I offered at the outset of the hearing that the tenants could amend their Application to deal with these issues that led to the rent reduction. I also offered that if they were not prepared to deal with the issue I would grant an adjournment to allow them to submit additional evidence.

I cautioned the tenants that if the landlord submits an Application for Dispute Resolution seeking to cancel the rent reduction and the landlord can show that the conditions had been met prior to the issuance of the 10 Day Notice to End Tenancy for Unpaid Rent that is the subject of this hearing the tenants may be held responsible for the payment of the regular rent for these months that they continue to pay a reduced amount and the landlord may be entitled to issue a new 10 Day Notice to End Tenancy for Unpaid Rent.

The tenants were insistent that they wanted to go before the original arbitrator who made the decision in March 2013. The tenants quoted page 44 of the Residential Tenancy Branch website (however, I was unable to find any such page on the website) as saying that only the original arbitrator could change an order.

I tried to clarify to the tenants that any arbitrator may determine if, since an order was issued, the parties have complied with such orders and if the conditions remain in place that would warrant the continuation of a rent reduction.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 39, 60, and 65 of the *Manufactured Home Park Tenancy Act (Act)*.

Background and Evidence

From the decision of March 5, 2013 I note that the tenants testified “that this month to month tenancy started in August 2007. The tenants pay a pad rent of \$350.00 per month which is due on the first day of each month.

The tenants submitted into evidence the following relevant documents:

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on April 9, 2015 with an effective vacancy date of April 22, 2015 due to \$125.00 in unpaid rent;
- A copy of a March 5, 2013 Dispute Resolution decision that ordered: “the tenants to reduce rent by \$125.00 per month until such time as the landlord inspects and addresses any repairs to the telephone poles and lines and inspects and addresses any problems with the drainage causing the damage to the edges of the roadway.”

Analysis

Section 39 of the *Act* states a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy on a date that is not earlier than 10 days after the date the tenant receives the notice. A notice under this section must comply with Section 45 of the *Act*.

Section 20 of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has the right under this *Act* to deduct all or a portion of the rent.

Section 58 states, among other things, that the director may order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of the tenancy.

As the tenants have an order that rent be reduced until such time as the landlord has satisfied some orders and there is no agreement between the parties that the work required to satisfy the orders is completed, I find the tenants had authority under Section 20 of the *Act* to withhold \$125.00 from their rent payment of April 2015. I order,

as a result, the 10 Day Notice to End Tenancy for Unpaid Rent dated April 9, 2015, in the amount of \$125.00 to be cancelled and of no effect.

Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 60 and grant a monetary order in the amount of **\$50.00** comprised of the fee paid by the tenants for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: June 01, 2015

Residential Tenancy Branch

