



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, OLC, RP, O

Introduction

This hearing was convened by way of conference call in response to the tenant's application to cancel a 10 Day Notice to End Tenancy for unpaid rent or utilities; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for the landlord to comply with the *Act*, regulations or tenancy agreement; for an Order make repairs to the unit, site or property and other issues.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*; served in person on January 28, 2015.

The tenant appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Preliminary Issues

RTB Rules of Procedure 2.3 states that "if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply." In this regard I find that not all the claims on the tenant's application are sufficiently related to the main issue to be dealt with together. I therefore will deal with the tenant's application to cancel the 10 Day Notice to End Tenancy for unpaid rent and utilities and I will not deal with the remaining sections of the tenant's claim at this hearing.

Issue(s) to be Decided

Is the tenant entitled to an Order cancelling the 10 Day Notices to End Tenancy?

Background and Evidence

The tenant testified that this tenancy started at the end of December, 2013. The parties had a verbal agreement for the tenant to rent this pad from the landlord for a monthly rent of \$350.00 plus utilities. Rent is due on the 1st of each month.

The tenant testified that the landlord served the tenant with a 10 Day Notice to End Tenancy for unpaid rent and utilities (the Notice) on July 20, 2015, although the date on the Notice is July 23, 2015. The tenant filed an application to dispute the Notice on July 21, 2015.

The tenant testified that she had an agreement with the landlord to plant some trees on the park. The agreement was that the landlord would pay the tenant \$2,000.00 to pay for the trees and any labour costs incurred. The cost of the trees was \$1,000.00 which the landlord did pay to the tenant. The tenant's labour costs were \$675.00 and a further \$325.00 was for the labour to be paid to another tenant who had helped plant the trees.

The tenant testified that there was some dispute over the amount of trees planted but the tenant had explained to the landlord that they had to purchase larger trees and take into account the size of the root mass of the existing trees that they planted the new trees between. The landlord did go to the nursery and was told how much the trees cost that the tenant has purchased. The landlord was supposed to pay the tenant the outstanding \$1,000.00 after the completion of the work; however, the landlord failed to do so. The tenant testified that she also had to water all the new trees by hand for two hours every day over the course of nine days but the landlord has not paid the tenant for this work either.

On July 16, 2015 the landlord put a hand written notice on the tenant's door which stated the tenant had not paid rent or electric and was evicted from the park. The tenant then filed an application to dispute this as the landlord owed the tenant money for her work. The landlord

then served the tenant with a legal Notice on July 20, 2015. The tenant informed the landlord that he must pay her what he owed so the tenant could pay her rent. The landlord did not respond and just walked away. The park manager did not want to get involved but did speak to the landlord and informed the tenant that the landlord was not happy. The tenant testified that every time she tried to resolve this issue with the landlord he just served her with another eviction notice.

The tenant testified that the agreement to plant the trees was verbal and there was not an agreement where the tenant could deduct the labour costs from her rent or utilities. The tenant agreed she did not pay rent or utilities for July because the landlord had not paid her. The tenant testified that she had paid rent for August and yet was still served another 10 Day Notice to End Tenancy.

Analysis

The landlord did not appear at the hearing to dispute the tenant's claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the landlord, I have carefully considered the tenants documentary evidence and sworn testimony before me.

With regard to the 10 dDay Notice; I refer the parties to s. 26 of the *Act* which states:

26. 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 a right under this Act to deduct all or a portion of the rent.

The agreement between the parties for the tenant to plant trees for the landlord in exchange for a monetary amount does not form part of the tenancy agreement and is a separate agreement to a tenancy agreement. The tenant agreed that the landlord was to pay the tenant in cash for her labour costs to plant the trees and that the parties did not agree the tenant could deduct any amounts from her rent or utilities.

With this in mind I find the tenant should have paid the rent and utilities for July and failed to do so in accordance with s. 26 of the *Act*. I am not therefore prepared to cancel the 10 Day Notice

as the rent and utilities for July were not paid within five days of the Notice having been served upon the tenant. There is no provision under the *Act* for me to allow the tenant to deduct wages owed from her rent or utilities.

However, the landlord did not attend the hearing to orally request an Order of Possession based on the effective date of the 10 Day Notice or to deal with any further unpaid rent or utilities that necessitated the issuing of another 10 Day Notice in August, 2015. The tenant has testified that rent was paid in August and the landlord has not appeared at the hearing to provide any evidence to the contrary. Consequently, the tenants application to cancel the 10 Day Notice dated July 23, 2015 is dismissed and the Notice remains in force and effect. The 10 Day Notice dated August 05, 2015 is hereby cancelled.

Conclusion

For the reasons set out above I dismiss the tenant's application to cancel the 10 Day Notice to End Tenancy dated August 23, 2015 without leave to reapply.

The reminder of the tenant's application is dismissed with leave to reapply.

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 05, 2015

Residential Tenancy Branch

