



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1027110 BC LTD (Weststone)
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This hearing dealt with cross applications. The landlord is seeking an order of possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a monetary order and an order to recover the filing fee. The tenant has filed an application seeking to have the 10 Day Notice to End Tenancy for Unpaid Rent or utilities set aside and an order to recover the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony. Both parties gave affirmed evidence.

Preliminary Issues

At the outset of the hearing the landlord advised that his office had incorrectly filled out the application form and that he was not seeking to retain the security deposit, as there isn't one posted and that they were not seeking monetary compensation for loss or damage but only the items that are described in the introduction. The hearing proceeded and completed on that basis.

Issues to be Decided

Is either party entitled to any of the above under the Act, regulation or tenancy agreement?

Background and Evidence

The landlord gave the following testimony:

The tenancy began on or about May 1, 2014. Rent in the amount of \$560.00 is payable in advance on the first day of each month. The landlord stated that the tenant withheld \$280.00 from Octobers rent and \$260.00 from Novembers rent. The landlord stated that the tenant was served with a notice to end tenancy on November 6, 2015. The

landlord stated that the tenant was entitled to a rent reduction as per an order from another Arbitrator in a previous hearing. The landlord stated that the reduction was to end once the landlord had conducted the repairs as ordered by the Arbitrator. The landlord stated that the repairs were conducted and completed by September 1, 2015.

The tenant gave the following testimony. The tenant stated that the repairs have not been completed as ordered and that the situation has gotten worse. The tenant stated that the tenant will gladly leave if the landlord buys him out. The tenant stated that the landlord has not complied with the order from the branch and should be entitled to the ongoing rent reduction.

Analysis

The issue of repair orders was conducted by another Arbitrator on December 15, 2014, file number 829029. In the analysis portion of that decision the Arbitrator stated:

*“As a result, if the Landlord has failed to complete the repair work by the end of 2014, the Tenant is entitled to pay **no** rent for January, 2015 based on his deduction for December, 2014 compensation (\$280.00) and his continuing rent abatement of 50% (another \$280.00) from January, 2015 rent.*

*If the Landlord completes the necessary repairs, I order that the monthly rent for this tenancy reverts to the regular amount established in this tenancy (i.e., currently \$560.00) in the month after the repairs are completed. For example, if the Landlord completes repairs by January 14, 2015 the Tenant is liable to pay the **normal** amount on February 1, 2015.*

*However, if the Landlord completes the above repairs and the Tenant is not satisfied and continues to withhold rent, **the Landlord is required to file an Application to prove to the Residential Tenancy Branch that there has been compliance with this decision**”.*

The landlord stated that there was no “mechanism” for him to do that and that he could only make an application for unpaid rent. I disagree with the landlord. The landlord could have made an application by simply checking the “other” box on the application form.. Furthermore, the laws of natural justice require that the landlord provide notice to the tenant and the Branch that the issue of repairs was to be addressed in this hearing, which they did not. The landlords’ application only referred to unpaid rent. In addition, the landlord acknowledged that the tenant has been paying 50% of his rent as ordered by the Arbitrator in the previous hearing. In the tenant’s view he was paying the rent that

he was ordered to and was in compliance with the decision of the Arbitrator. I agree with the tenant. The landlord was premature in issuing a notice for unpaid rent as the unpaid portion was only that of the rental rebate and nothing beyond that.

Based on the landlords' own testimony confirming that the tenant has not withheld any rent other than that was ordered by the Arbitrator in their previous hearing, I hereby set aside the notice to end tenancy for unpaid rent or utilities; it is of no effect or force. In addition, the issue of whether the repairs have been completed in accordance with the previous Arbitrators order must be dealt with in a separate hearing. Although the landlord continually referred to the repairs during this hearing, it is not the subject of either party's application and I decline to make a finding in that regard.

The landlord is at liberty to file an application to address that issue if they so choose.

As the tenant has been successful in his application he is entitled to the recovery of the \$50.00 filing fee. The rent payable for the month of February 1, 2016 is \$230.00.

Conclusion

The landlords' application is dismissed in its entirety.

The tenants rent payable for the month of February 1, 2016 is \$230.00.

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: January 13, 2016

Residential Tenancy Branch

