



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BRESMORE ENTERPRISES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenant – CNR, FF

For the landlord – OPR, OPC, MNR, FF, O

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied to cancel a Notice to End Tenancy for unpaid rent or utilities and to recover the filing fee from the landlord for the cost of this application. The landlord applied for Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; and to recover the filing fee from the tenant for the cost of this application.

At the outset of the hearing the landlord withdrew their application for an Order of Possession for Cause as a One Month Notice was not issued to the tenant.

The tenant and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure.

Issue(s) to be Decided

- Is the tenant entitled to have the Notice to End Tenancy canceled?
- Is the landlord entitled to an Order of Possession for unpaid rent?
Is the landlord entitled to a Monetary Order to recover unpaid rent?

Background and Evidence

The parties agreed that this tenancy started on October 01, 2014. The tenant rents a pad from the landlords on this RV Park for a monthly pad rent of \$500.00. This is due on the 1st of each month although the tenant testified the previous manager would allow him to pay his pad rent within the first two weeks of each month.

The landlord's agent gave testimony on behalf of the landlords and testified that the tenant had owed rent for October, 2015 of \$500.00. The tenant paid \$500.00 on November 06, 2015 and this was applied to October's rent. The tenant paid \$500.00 rent on December 01, 2015 and this was applied to the outstanding rent for November. The tenant paid \$500.00 on December 31, 2015 and this was applied to December's rent.

The landlord's agent testified that the tenant failed to pay rent for January on the first of the month and a 10 Day Notice to End Tenancy for unpaid rent or utilities (the Notice) was served upon the tenant in person on January 04, 2016. The Notice informed the tenant that he had five days to either pay the outstanding rent or file an application to dispute the Notice or the tenancy would end on January 15, 2016. The landlord's agent testified that rent was not paid within the five allowable days.

The landlord's agent testified that the tenant paid rent of \$500.00 on February 01, 2016 and this was then applied to January's rent. The landlord's agent agreed they did not notify the tenant that the rent paid after the 10 Day Notice was accepted for use and occupancy only and did not reinstate the tenancy. The landlord's agent testified that no rent has been received for March, 2016. The landlord's agent testified that to date there is \$1,000.00 outstanding for February and March, 2016 and the landlord seeks to amend their application to include the unpaid rent for March, 2016. The landlord's agent referred to their documentary evidence of different types of rent ledgers, notes from a diary concerning rent, some invoices and some receipts for rent paid.

The landlord seek an Order of Possession effective as soon as possible and a Monetary Order to recover the unpaid rent and filing fee of \$100.00.

The tenant testified that he paid his rent for October on October 02 or 03, 2015 to the previous manager of the park in cash. That manager did not provide a receipt to the tenant. The tenant testified that therefore October's rent was paid in October, November's rent was paid on November 06, 2015, December's rent was paid on December 01, 2015, January's rent was paid on December 31, 2015 and February's rent was paid on February 01, 2016. The tenant agreed that rent for March has not yet been paid.

The tenant seeks an Order to cancel the Notice and for the tenancy to continue.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlord's claim that the tenant failed to pay rent for October, 2015 and all subsequent rent then paid was applied to the previous month. In this matter the landlord has the burden of proof to show that rent was outstanding for October and that on the date the Notice was issued and served upon the tenant there were rent arrears of \$500.00.

I am not satisfied from the evidence before me that the landlord has met the burden of proof. The tenant testified that he paid \$500.00 to the previous park manager on either October 02 or 03, 2015 and was not provided a receipt. In normal circumstances the tenant would have the burden of proof to show that this rent was paid as declared; however, I find the landlord's system of accounting to be unclear, and confusing and does not clearly show a system to record payments of rent. Furthermore, the landlord provided no rent ledgers for October, 2015 in documentary evidence to determine if and when a payment was made by the tenant on October 02 or 03, 2015 and no clear record of rent receipts for payments made in cash.

It is important to note that where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence the party with the burden of proof has not met the onus to prove their claim and the claim fails. As the landlord's system for recording rent payments is unclear and confusing I find that there is insufficient evidence to show that there was outstanding rent for October, 2015 which necessitated the rent for subsequent months being applied to the previous month.

Consequently, I am not satisfied that at the time the Notice was issued and served upon the tenant that there was any rent outstanding and therefore the Notice is cancelled.

With regard to the landlord's application to recover unpaid rent; as I have found the landlord has insufficient evidence to support their claim for unpaid rent due on January 01, 2016, then I dismiss the landlord's application for an Order of Possession and a Monetary Order to recover unpaid rent. The landlord requested that their application be amended to include unpaid rent for March, 2016 of \$500.00. I am not prepared to allow

this amendment and if the rent for March remains unpaid the landlord is entitled to re-serve the tenant with a new 10 Day Notice to End Tenancy for unpaid rent.

The tenant's application to cancel the Notice is allowed. The Notice is cancelled and the tenancy will continue at this time.

Conclusion

The tenant's application is allowed. The 10 Day Notice to End Tenancy for unpaid rent or utilities dated January 04, 2016 is cancelled and the tenancy will continue.

As the tenant has been successful in setting aside the Notice, the tenant is entitled to recover the **\$50.00** filing fee for this proceeding and may deduct that amount from their **next rent** payment when it is due and payable to the landlord.

The landlord's application is dismissed in its entirety without 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: March 02, 2016

Residential Tenancy Branch

