



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 an Application for Dispute Resolution by the tenants to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”), issued on July 13, 2016.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Preliminary and procedural matter

On March 30, 2016, the tenants and the landlord’s agent AD attending a dispute resolution hearing. At the hearing the Arbitrator declined jurisdiction, as they were unable to determine the ownership of the manufactured home. AD was the owner/seller of the manufactured home and the tenants were the purchaser.

The tenants paid AD the amount of \$300.00 per month until the purchase price was satisfied in 2015, the transfer of legal title of manufacture home has not been completed and that issue is before the Provincial court; however; the parties agreed the tenants are entitled to ownership of the manufacture home.

In addition, the tenants have paid the amount of \$200.00 for site rent, which is the issue at today’s hearing.

In this case, AD has two unrelated roles: the first role AD is the owner/seller of the manufacture home that issue was declined to be heard due to lack of jurisdiction; the second role AD acts as the agent for the owner of the manufacture home park, this is confirmed by the owner of the park EZ.

I find the transfer of the manufactured home, and the site rent are two separate issues and both have their own distinct facts. Therefore, I accept I have jurisdiction under the *Manufactured Home Park Tenancy Act* (the "Act") as the issue for me to consider is whether site rent has been paid.

Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

The parties agreed that at the start of the tenancy the tenants paid \$300.00 to AD for the purchase of the manufacture home and \$200.00 was paid as site rent to the landlord's agent for the benefit of the owner of the manufacture home park. The parties agreed that over the years the tenants were served with rent increases and the current rent due was \$217.50. Filed in evidence are rent receipts and notice of rent increases that are in the tenants' name.

The tenants acknowledged that they received the Notice on July 18, 2016. The notice informed the tenants that the notice would be cancelled if the rent was paid within five days. The notice also explains the tenants had five days to dispute the notice.

The landlord's agent testified that they collected site rent for the benefit of the owner of the manufacture home park from November 2011 to November 30, 2015. The agent stated that after that date the tenants paid the site rent directly to the owner of the manufacture home park.

EZ the owner of the manufacture home park testified that the tenants have always paid their site rent since their tenancy began in 2011, to their authorized agent. EZ stated that a dispute between AD and the tenants arose regarding the transfer of the manufacture home.

EZ testified that since that dispute commenced in December 2015, the tenants have paid their site rent in the amount of \$217.50, each month directly to them. EZ stated that the site rent cheque for June 2016 was not cashable because the tenants placed a stop payment. EZ stated that they have not received any site rent for June 2016, July 2016, and August 2016 and seek an order of possession.

The tenants agreed that they do not own the site on which the manufacture home is located. The tenants acknowledge that they have been paying site rent since the tenancy

commenced in 2011. The tenants acknowledged that they have not paid any money to the owner of the site rent since June 2016. The tenants testified that they are not responsible for the site rent if the ownership of the manufacture home is not determined.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this matter, the ownership of the manufacture home is not for my consideration. While I accept that matter is before the Provincial Court, the issue of unpaid site rent is with my jurisdiction.

Section 1 of the Act defines,

"tenancy" means a tenant's right to possession of a manufactured home site under a tenancy agreement;

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a manufactured home site, use of common areas and services and facilities;

[Reproduced as written]
[My emphasis added]

In this case, the tenants have had possession of the manufactured home site since 2011. The parties agreed that the tenants are the rightful owners of the manufacture home; however, the transfer of the manufacture home has not been completed.

The tenants acknowledged that they do not own the site on which the manufacture home is situated. While the tenants do not feel they are responsible to pay the site rent as they do not have title of the manufacture home or a written tenancy agreement for site rent. However, I find the evidence supports that there was a verbal agreement between the tenants and the landlord to possess the manufacture home site and pay rent for that site. As the tenants have been paying site rent since the tenancy commenced in 2011, this is supported by receipts file in evidence.

Further, the tenants have accepted and paid additional rent increases that were issued in their name. That is supported by notice of rent increases and the corresponding rent receipts.

Furthermore, at the previous hearing, which was earlier referred to in my decision; the tenants confirmed that they were now paying their rent to the owner of the manufacture home park. This was in the amount of \$217.50.

I am satisfied based on the evidence that there was an agreement between the landlord and tenants to pay the site rent to the owner of the manufacture home park. The tenants have admitted no money has been paid to the landlord since June 2016.

Although the tenants filed an application for dispute resolution within the time limit permitted under the Act, I find the tenants' application must be dismissed as the tenants admitted no rent has been paid since June 2016. The tenants did not have the authority under the Act to withhold the site rent, simply because there is a dispute with the seller of the manufacture home. Therefore, I dismiss the tenant's application without leave to reapply.

As the tenants were not successful with their application the tenants are not entitled to recover the filing fee from the landlords.

As the tenants application has been dismissed, I find that the landlords are entitled to an order of possession, pursuant to section 48 of the Act, effective **two days** after service on the tenants. This order may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

The tenants failed to pay rent. The tenants' application is dismissed. The landlords are granted an order of possession.

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: September 12, 2016

Residential Tenancy Branch