



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, DRI, FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution (the “Application”) made by the Tenants on September 6, 2016 to cancel a notice to end tenancy, to dispute an additional rent increase, and to recover the filing fee from the Landlord.

One of the Tenants, an agent for the Tenant, and the Landlord appeared for the hearing and provided affirmed testimony. The Landlord confirmed receipt of the Tenants’ Application and the Tenants’ rent receipts provided for July and September 2016. The Landlord confirmed that he had not provided any documentary evidence prior to this hearing.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided.

Preliminary Issues

At the start of the hearing, I determined that the Tenants had applied to dispute the 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”) within the five day time limit provided for by Section 39(4) (b) of the *Manufactured Home Park Tenancy Act* (the “Act”).

The parties confirmed during the hearing that the Tenant had been issued with rent receipts for rent payments made by the Tenants in this tenancy. However, the parties were in dispute about the amount of rental arrears that had accumulated during this tenancy, despite not providing the rental receipts to support the amounts testified to. As a result, the Landlord decided to withdraw the 10 Day Notice dated September 5, 2016 as the amount payable on the 10 Day Notice would be affected by the Tenants’ illegal payment of a rent increase as detailed below. The Landlord also withdrew the 10 Day

Notice to give the parties an opportunity to have a discussion about the rental arrears that are outstanding. If the parties are unable to reach an agreement and the Tenants are still alleged to be in rental arrears, the Landlord is at liberty to issue the Tenants with another notice 10 Day Notice or use remedies under the Act to end the tenancy. The Landlord must use the most current approved form and must be able to prove the amount of rental arrears outstanding on the 10 Day Notice. The Tenant agreed to the Landlord withdrawing the 10 Day Notice. The hearing continued to hear the evidence of the parties in relation to the illegal rent increase as follows.

Issue(s) to be Decided

Is the rent increase imposed on the Tenants starting on August 1, 2016 illegal?

Background and Evidence

The parties agreed that this tenancy started eight years ago under an oral agreement. Rent was payable by the Tenants in the amount \$225.00 on the first day of each month. Although a copy of the notice of rent increase was not provided into evidence by the parties for this hearing, the parties agreed that in April 2016 the Tenants were served with a proper notice of rent increase. This served to increase the rent from \$225.00 to \$250.00 per month effective on August 1, 2016.

The Tenant testified that he paid the illegal rent increase of \$250.00 for August, September, October, and November 2016. However, the increased amount he paid for these months was not legal. The Landlord agreed that the amount of rent increase he had imposed on the Tenants was illegal and that the Tenants had paid the illegal rent increase for four months at the time of this hearing.

Analysis

Part 4 of the Act explains the rent increase provisions that parties must follow during a tenancy. Section 36(1) (a) of the Act allows a landlord to increase a tenant's rent only up to the amount calculated in accordance with the Manufactured Home Park Tenancy Regulation (the "Regulation"). Section 32(2) of the Regulation provides for the calculation that is used to determine the percentage amount of a rent increase each year. For 2016, this has been determined to be 2.9%. Therefore the maximum amount of rent increase allowed pursuant to the Act and the Regulation on \$225.00 is \$6.53 plus any government levies and public utility fees.

In this case, the Landlord received from the Tenants \$250.00 per month which amounts to an excess amount of \$18.47 per month. As a result, I am only able to conclude based

on the Tenant's undisputed evidence that the Landlord imposed an illegal rent increase on the Tenants of \$18.47 per month for August, September, October and November 2016. This was contrary to the Act and the Regulation.

A landlord is responsible for apprising themselves of their rights and responsibilities with respect to the rent increase provisions. Based on the foregoing, I find that the Tenants are entitled to recover the illegal rent increase from the Landlord for a total amount of \$73.88 (\$18.47 x 4 months). As the Tenants have been successful in this Application, they may also recover the \$100.00 filing fee from the Landlord. As a result, the Tenants are entitled to recover \$173.88 of illegal rent increases from the Landlord.

Pursuant to Section 65(2) of the Act the Tenants may deduct this amount from their next instalment of rent. The Tenants may want to provide the Landlord with a copy of this Decision when making the reduced payment of rent. If the parties decide to work on mutual agreement in relation to rental arrears for this tenancy I would caution the parties to keep that agreement separate to this matter of the illegal rent increases in this Decision to prevent confusion on the amounts payable.

Conclusion

The Landlord did not comply with the rent increase provisions of the Act and the Regulation. The Tenants may recover the illegal rent increase and the filing fee from their next installment of rent. The parties agreed to withdraw the 10 Day Notice and no legal findings were made on it. This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: October 31, 2016

Residential Tenancy Branch