



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, FF

Introduction

This hearing was convened as a result of the tenant's application under the *Manufactured Home Park Tenancy Act* (the "Act") to dispute a rent increase and to recover the application filing fee.

The tenant and the landlord both appeared at the hearing. The landlord's support person also appeared. The landlord confirmed receipt of the tenant's application and supporting materials. The landlord served the tenant and the Residential Tenancy Branch (the "RTB") with a letter from the landlord to the RTB, documents evidencing the costs associated with running the manufactured home park, and the tenant's application to lease the manufactured home park site. These materials were not before me but the tenant confirmed that she had received them. Neither party sought an adjournment. As this issue can be decided without my reviewing the landlord's materials, an adjournment is not necessary in any event.

The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, to make submissions, and to respond to the submissions of the other party.

At the onset of the hearing the individual landlord confirmed that there was also a corporate landlord and I have therefore added the corporate landlord to the style of cause.

Issue(s) to be Decided

Has the landlord increased the rent in breach of the Act?

Is the tenant entitled to recover the filing fee from the landlord?

Background and Evidence

The parties agreed that there is no written tenancy agreement and that this tenancy began on April 1, 2015 with a monthly rent of \$400.00 due on the 1st of each month. The tenant testified that she purchased her manufactured home from its prior owner but did not take an assignment of the prior owner's site rental agreement with the landlord. Instead, she applied to the landlord to lease the manufactured home site for \$400.00 monthly. The tenant also stated that the landlord at that time did not tell the tenant that the prior tenant's rent had been substantially less or give her a Notice of Rent Increase when she applied to rent the site. Nor did the real estate agent involved or the prior tenant advise the tenant of the possibility of taking over the prior tenant's rental agreement.

The tenant explained that although she has been leasing the manufactured home site for \$400.00 monthly since April of 2015, she recently discovered that most of her neighbours pay substantially less. The tenant included a copy of a rental cheque dated January 1, 2015 in the amount of \$265.00 from the prior tenant.

The landlord testified that her company took over around January of 2016, and that the rental agreement in dispute was already in place at that time. The landlord also testified that she has looked through the prior landlord's documents and has not located any assignment of the lease to the current tenant. The current landlord does not know why the tenancy was not assigned.

A copy of a Notice of Rent Increase from the current landlord, dated December 23, 2016 and increasing the rent to \$416.50 effective April 1, 2017, was also in evidence. The tenant is not disputing that rent increase.

Analysis

The tenant testified that she applied to lease the manufactured home site for \$400.00 monthly and has been paying this amount for close to two years. She also testified that she did not receive an assignment of the lease from the prior tenant, who also sold her the manufactured home.

Sections 34-36 of the Act control rent increases. A "rent increase" requires that the amount payable increases from the prior amount payable under the same tenancy agreement. In other words, the Act only controls rent increases for existing rental agreements. A landlord is free to enter into a new tenancy agreement at a new rate with a new tenant. Here, the prior tenancy agreement was ended when the prior tenant

left the manufactured home site under s. 37(1)(d), if not before under one of the other mechanisms set out in s. 37(1).

Part 7 of the *Manufactured Home Park Regulation* (the “Regulation”) governs sublets and assignments. The current tenant could have asked the prior tenant to assign the tenancy agreement to her. This would have also required the landlord’s consent. If the tenancy agreement had been assigned, then the current tenant would effectively have “stepped into the shoes” of the former tenant, and the same tenancy agreement would have continued. This is set out in s. 49(1) of the Regulation, which says that when a home owner assigns an agreement “(a) the purchaser becomes the tenant and assumes the rights and obligations under the Act and that tenancy agreement, and (b) the tenancy agreement continues on the same terms.” [Emphasis added]

Unfortunately the tenant before me today was not aware that assignment was an option. As a result, she applied to the landlord to start a new tenancy for \$400.00 monthly. As a result, the change from \$265.00 to \$400.00 in monthly rent is not in breach of the Act.

Conclusion

The tenant’s application is dismissed without leave to reapply.

As the tenant was not successful I do not award the filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the Act. Pursuant to s. 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: March 29, 2017

Residential Tenancy Branch