



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, AS, DRI, OLC, FFT

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution (the Application) pursuant to the *Manufactured Home Park Tenancy Act* for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 40;
- an order allowing the tenant to assign or sublet because the landlord's permission has been unreasonably withheld pursuant to section 58;
- an order regarding a disputed additional rent increase pursuant to section 36;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 55; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 65.

The landlord's agent (the landlord) and the tenant's agent (the tenant) attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

While I have turned my mind to all the documentary evidence, including the testimony of both parties, not all details of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Application and the tenant's evidentiary package sent by way of registered mail on January 06, 2018. In accordance with sections 81 and 82 of the *Act*, I find the landlord is duly served with the Application and the tenant's evidentiary package.

The tenant acknowledged receipt of the landlord's evidence sent by way of registered mail on February 07, 2018. In accordance with section 81 of the *Act*, I find the tenant is duly served with the landlord's evidence.

The tenant testified that they received the One Month Notice which was personally served to them on January 02, 2018. In accordance with section 81 of the Act, I find the tenant is duly served with the One Month Notice.

Issues(s) to be Decided

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession for landlord's use?

Is the tenant entitled to an order allowing the tenant to assign or sublet because the landlord's permission has been unreasonably withheld?

Is the tenant entitled to an order regarding a disputed additional rent increase?

Is the tenant entitled to an order requiring the landlord to comply with the Act, regulation or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant testified that this tenancy commenced sometime in the year 2000 with a current monthly rent of \$689.00. The landlord testified that they just took over management of the park in 2015 and confirmed the monthly rent.

A copy of the signed One Month Notice dated December 31, 2017, with an effective date of March 31, 2018, was provided in evidence by the tenant. The reason indicated on the One Month Notice is that the tenant rent is repeatedly late paying the rent.

The tenant also provided in documentary evidence:

- a copy of an Enduring Power of Attorney (EPOA) dated August 25, 2017 appointing the tenant's agent S.A. and person B.A. to be the tenant's attorneys to make decisions on the tenant's behalf and do anything that the tenant may lawfully do as an agent.;
- a copy of an e-mail from the tenant's agent to the landlord dated September 14, 2017, in which the tenant's agent provides photos of the tenant's EPOA and requests for correspondence regarding the tenancy to be sent to her due to her mother's declining mental faculties;
- a copy of a Canada Post tracking number for service of the EPOA to the landlord which indicates as being received by the landlord;

- a copy of an e-mail from the landlord to the tenant's agent dated August 31, 2017 in which the landlord states that he will never accept an assignment of the tenant's manufactured home park tenancy agreement in the event that their manufactured home is sold to another party. In this same e-mail the landlord states that the tenant can stay in the manufactured home park for an indeterminate period should the tenant provide 12 months postdated cheques;
- A copy of a signed agreement between the landlord and the tenant, dated January 10, 2015, in which the tenant agrees to a new monthly rent of \$625.00, commencing on March 01, 2015, to and including the last day of February 2016, and thereafter a monthly rent of \$625.00 per month, plus an annual rent increase as permitted by the *Act*;
- copies of Notice of Rent Increase forms for 2015, 2016 and 2017;
- a copy of a timeline of the monthly rent paid with explanations as to why it was late on those months;
- copies of receipts from the landlord for the monthly rent paid in June 2017, July 2017, August 2017, September 2017 and November 2017; and
- copies of cleared rent cheques for July 2017, September 2017, October 2017, November 2017, December 2017, & January 2018.

The landlord provided in documentary evidence

- copies of non-sufficient funds (NSF) notices from the landlord's financial institution for May 2017, July 2017, August 2017 and September 2017;
- a copy of a rent log showing the rent owing and paid from March 2017 to September 2017;
- copies of e-mail exchanges between the landlord, the tenant and the tenant's agents regarding the payment of the monthly rent; and
- copies of receipts from the landlord to the tenant for the monthly rent paid from June 2017 to February 2018 which are for use and occupancy only.

The landlord testified that the tenant is repeatedly late paying the monthly rent and referred to copies of four returned cheques in their evidence for March 2017, May 2017, August 2017 and September 2017.

The tenant's agent submitted that although her mother ran into financial difficulties due to unfortunate circumstances but that the tenant has no problem affording the monthly rent. The tenant's agent stated that she and her brother took over her mother's finances in August of 2017 and referred to the EPOA submitted in evidence. The tenant's agent submitted that the landlord had a post-dated cheque for the September 2017 monthly

rent and that it was not late, the landlord only chose to deposit the September 2017 rent cheque on September 05, 2017. The tenant's agent submitted that there was a cheque for a previous month that was not cleared by the tenant's financial institution and that was re-deposited on September 26, 2017. The tenant's agent testified that since she has taken over her mother's finances there have been no late payments of the monthly rent since September 2017.

The tenant's agent stated that the landlord has raised the rent illegally as there was a rent increase in January 2015 and then another rent increase in March 2015. The tenant's agent stated that the landlord presented a 10 year lease to the tenant before he owned the manufactured home park in exchange for her to agree to an \$89.00 rent increase once the sale of the manufactured home park was completed to the landlord. The tenant argued that the landlord was not the landlord at the time the agreement was signed. The tenant's agent further submitted that subsequent notice of rent increase forms given to the tenant from the landlord have not given the full three months required under the *Act* for the legal rent increases to take effect.

The tenant's agent also stated that the landlord has refused to ever allow her mother to assign the manufactured home park tenancy agreement to a potential purchaser of her mobile home but confirmed that no sale has occurred and that the tenant has not submitted a form to the landlord to request assignment of the tenancy.

The tenant's agent submitted that she has provided the tenant's EPOA to the landlord but that the landlord continues to serve all documents related to the tenancy directly to the tenant and has disregarded the tenant's agent's request for all documents to be served to her as the tenant's power of attorney. The tenant's agent testified that her mother is losing her mental faculties and that all legal notices from the landlord should be served to the agent and not the tenant going forward.

The landlord responded to the tenant's agent's testimony and stated that he is serving documents to the tenant in accordance with the *Act*.

Analysis

One Month Notice

Section 40 of the *Act* allows a landlord to issue a Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so. Section 40 of the *Act* provides that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute

the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the One Month Notice. As the tenant disputed this notice on January 04, 2018, and since I have found that the One Month Notice was served to the tenant on January 02, 2018, I find the tenant has applied to dispute the One Month Notice within the time frame provided by section 47 of the *Act*. I find the landlord bears the burden to prove that the tenant is repeatedly late paying the rent.

Residential Tenancy Policy Guideline #38 (PG#38) states that; "Three late payments are the minimum number sufficient to justify a notice under these provisions." PG #38 also states that "if the late payments are far apart, an arbitrator may determine that, in the circumstances, the tenant cannot be said to be 'repeatedly late'. A landlord who fails to act in a timely manner after the most recent late payment may be determined by an arbitrator to have waived reliance on this provision."

I have reviewed the evidence and testimony and I find the landlord has not provided sufficient evidence that the tenant is repeatedly late paying the rent.

I find the landlord did not dispute the fact that the September 2017 monthly rent was not paid late by the tenant as it was the landlord who failed to deposit the post-dated cheque that they had in hand until September 05, 2017. I find that the record of a second payment of rent in September 2017 was for a previous month and not for September 2017. I further find the tenant and the landlord have both provided evidence that from September 2017 to February 2018, the monthly rent has been paid on time for six months and that the tenant is no longer repeatedly late paying the monthly rent. I accept the tenant's agent's testimony that she has assumed control of the tenant's finances and that late payment of rent will not occur in any future rent payments.

For the reasons above, I find the landlord has insufficient grounds to issue the One Month Notice and to end this tenancy for cause. For this reason the One Month Notice is set aside and this tenancy continues until it is ended in accordance with the *Act*.

Further late payments of rent could very well lead to a different result should the landlord issue a new One Month Notice for the late payment of rent.

Assignment of the tenancy agreement

Section 28 of the *Act* states that a tenant may assign a tenancy agreement if the tenant has prior written consent of the landlord in accordance with the Manufactured Home Park Tenancy Regulations (*Regulations*).

Sections 44 (1) and (2) of the *Regulations* stipulate that a tenant must serve a request for assignment of the tenancy in writing to the landlord in accordance with the *Act*. Section 45 of the *Regulations* allows a landlord 10 days to respond to the tenant's written request and to provide the grounds on which they are withholding consent, if consent for assignment is withheld.

Based on the evidence and testimony, I find the tenant has not provided a written request for assignment of the tenancy agreement to the landlord and has not provided any evidence of a pending sale of the mobile home. If the tenant has a sale of the mobile home pending and submits a request for assignment of the tenancy agreement to the landlord, which is denied, then they will have the grounds to file an application for dispute resolution.

As no request for assignment of the tenancy agreement has been submitted to the landlord, I dismiss the tenant's request for an order allowing the tenant to assign the tenancy agreement, with leave to reapply.

Dispute Additional Rent Increase

Section 14 (2) of the *Act* stipulates that a tenancy agreement may be amended to change a term if the landlord and the tenant agree to the amendment.

I have reviewed the evidence and testimony and I find the rent increase in March 2015 was agreed to by the tenant in writing with the landlord. I find the landlord's proposal is clear in its' stated intentions. I find that the mutually agreed change in the amount of the monthly rent payable does not fall under part 4 of the *Act*, which governs rent increases given to a tenant from a landlord.

For the above reasons I dismiss the tenant's application to dispute an additional rent increase, without leave to reapply.

I note that, regarding the tenant paying the rent increase before the full three months required under section 35 (2) of the *Act*, Section 35 (4) of the *Act* states that if a landlord's rent increase does not comply with subsection (2), the notice takes effect on the earliest date that does comply. Section 36 (5) of the *Act* states that if a landlord

collects a rent increase that does not comply with Part 4 of the *Act*, the tenant may deduct the increase from rent.

Comply with the Act

Section 55 (3) of the *Act* allows an arbitrator to make any order necessary to give effect to the rights, obligations and prohibitions under this *Act*, including an order that a landlord or tenant comply with this *Act*, regulations or tenancy agreement.

Section 64 (2) of the *Act* allows for an arbitrator to make an order that a document must be served in a manner the arbitrator considers necessary, despite sections 81 and 82 of the *Act*.

I find the tenant has served a copy of the EPOA to the landlord in accordance with section 81 of the *Act* and that the tenant's agent is a legal representative for the tenant regarding all tenancy related matters.

I **order** the landlord to serve any documents, notices and correspondence regarding the tenancy to the tenant's agent's address as provided to the landlord by the tenant's agent.

I note that the landlord and the tenant's agent are at liberty to agree to use the tenant's agent's e-mail for service of documents, if mutually agreed upon by both parties. If there is any dispute regarding service of documents to the tenant, the landlord will have to prove that they have served them to the tenant's agent at her address for service as provided to the landlord.

As the tenant has been successful in their primary reason for filing the application, to dispute the One Month Notice, I allow the tenant to recover the filing fee for this Application from the landlord.

Conclusion

The One Month Notice dated December 31, 2017, is cancelled and of no force or effect.

This tenancy continues until ended in accordance with the *Act*.

Pursuant to section 65 of the *Act*, I order that the tenant may reduce the amount of rent paid to the landlord from a future rent payment on one occasion, in the amount of \$100.00, to recover the filing fee for this application.

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 12, 2018

Residential Tenancy Branch