Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Decision Codes: DRI, MNDCT

Introduction

The Application for Dispute Resolution filed by the Tenant makes the following claims:

a. Reimbursement of rent increase paid that was not permitted by the Manufactured Home Park Tenancy Act.
b. A monetary order in the sum of $118.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The landlord failed to provide any documentary evidence.

I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on November 15, 2018. With respect to each of the applicant's claims I find as follows:

Issues to be Decided

The issues to be decided are as follows:

a. Whether the tenant is entitled to an order for the reimbursement of rent paid that was not permitted by the Residential Tenancy Act?
b. Whether the tenant is entitled to a monetary order and if so how much?

Background and Evidence:

The tenancy began in 2000. The present rent is $435 per month payable in advance on the last day of the previous month. The tenant did not pay a security deposit.

There is no written tenancy agreement. However, the tenant produced a document called RV Rules that included the following:

- Rent includes – base amount for hydro (as set out below), wifi, basic cable full hook-up
- Unless long term agreement signed, tenants are renting on a month to month basis only.

- For Hydro, tenants are allotted $75 per month from October to March and $50 per month from April to September. Tenants who exceed these limits will receive an additional monthly invoice to cover the extra cost of their hydro….

The tenant testified that the landlord unilaterally changed the above agreement by reducing the winter rate amount included with the rent from $75 per month to $50 per month beginning the Fall of 2017. The tenant seeks to recover the additional sums paid including $25 for January 2018, $25 for February 2018, $25 for March 2018 and $43 for October 2018.

In September 2018 the tenant got a notice that commencing September 15, 2018 hydro would no longer be included in the rent.

On September 28, 2018 the tenant received a Notice that was not on the approved government form that stated the winter rates would be increased to $600 per month and the summer rates would be increased to $800 per month. Hydro, wifi and other services would no longer be included with the rent.

The landlord failed to provide any documentary evidence. However, she gave the following oral evidence:

- The tenant has not talked to her directly.
- This is a campground and is not a manufactured home park. There is a manufactured home park own by an unrelated third party next door.
- As this is a campground it is not subject to the Residential Tenancy Act.
- There are 25 RV sites on the property.
- The electrical hook ups is for 40 amps which is not sufficient for a manufactured home.
- There is no Park Committee
- There are no paved roads.
- There is a washroom/laundry room.
- The parties do not have a tenancy agreement.
- The property is zoned as a campground.
- They do not charge GST for long term residents.

<u>Preliminary Issue – Jurisdiction:</u>

> "Policy Guideline #9 includes the following:
>
> This Guideline clarifies the factors that distinguish a tenancy agreement from a license to occupy. The definition of "tenancy agreement" in the Residential Tenancy Act includes a license to occupy. However, the Manufactured Home Park Tenancy Act does not contain a similar provision and does not apply to an occupation of land that under the common law would be considered a license to occupy.

A license to occupy is a living arrangement that is not a tenancy. Under a license to occupy, a person, or "licensee", is given permission to use a site or property, but that permission may be revoked at any time. Under a tenancy agreement, the tenant is given exclusive possession of the site for a term, which can include month to month. The landlord may only enter the site with the consent of the tenant, or under the limited circumstances defined by the Manufactured Home Park Tenancy Act. A licensee is not entitled to file an application under the Manufactured Home Park Tenancy Act.

If there is exclusive possession for a term and rent is paid, there is a presumption that a tenancy has been created, unless there are circumstances that suggest otherwise (my emphasis). For example, a park owner who allows a family member to occupy the site and pay rent, has not necessarily entered into a tenancy agreement. In order to determine whether a particular arrangement is a license or tenancy, the arbitrator will consider what the parties intended, and all of the circumstances surrounding the occupation of the premises.

Some of the factors that may weigh against finding a tenancy are:

- Payment of a security deposit is not required.
- The owner, or other person allowing occupancy, retains access to, or control over, portions of the site.
- The occupier pays property taxes and utilities but not a fixed amount for rent. The owner, or other person allowing occupancy, retains the right to enter the site without notice.
- The parties have a family or other personal relationship, and occupancy is given because of generosity rather than business considerations.
- The parties have agreed that the occupier may be evicted without a reason, or may vacate without notice.
- The written contract suggests there was no intention that the provisions of the Manufactured Home Park Tenancy Act apply.

The arbitrator will weigh all of the factors for and against finding that a tenancy exists, even where the written contract specifies a license or tenancy agreement. It is also important to note that the passage of time alone will not change the nature of the agreement from license or tenancy.

Tenancies involving travel trailers and recreational vehicles

Although the Manufactured Home Park Tenancy Act defines manufactured homes in a way that might include recreational vehicles such as travel trailers, it is up to the party making an application under the Act to show that a tenancy agreement exists.

In addition to any relevant considerations above, and although no one factor is

determinative, the following factors would tend to support a finding that the arrangement is a license to occupy and not a tenancy agreement:

- The manufactured home is intended for recreational rather than residential use.
- The home is located in a campground or RV Park, not a Manufactured Home Park.
- The property on which the manufactured home is located does not meet zoning requirements for a Manufactured Home Park.
- The rent is calculated on a daily basis, and G.S.T. is calculated on the rent.
- The property owner pays utilities such as cablevision and electricity.
- There is no access to services and facilities usually provided in ordinary tenancies, e.g. frost-free water connections.
- Visiting hours are imposed.

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Analysis:

After carefully considering all of the evidence and weighing the various factors I determined that the Manufactured Home Park Tenancy Act applies and that I have jurisdiction for the following reasons:

- There is a presumption set out in the Policy Guideline that a situation such as this creates a tenancy unless there are circumstances that would such otherwise.
- The landlord alleged the Act did not apply. However, the landlord failed to provide any documentary evidence to support these allegations. Of significance the landlord failed to provide evidence as to the zoning of the park.
- The tenant has resided in the park for 18 years.
- While there is no tenancy agreement the Park Rules describe the resident as being a tenant.
- The landlord has not used a form of agreement that clearly states the MHPTA does not apply.
- The rent for long term residents is not charged on a daily basis and they do not charge GST.

Tenant Application for an Order reimbursing her a rent increase not permitted by the Act:

I determined that the Manufactured Home Park Tenancy Act applies.

“Rent” and “service or facility” is defined as follows:

> "rent" means money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a manufactured home site, for the use of common areas and for services or facilities, but does not include a fee prescribed under section 89 (2) (k) [regulations in relation to fees];

"service or facility" includes any of the following that are provided or agreed to be provided by a landlord to the tenant of a manufactured home site:

(a) water, sewerage, electricity, lighting, roadway and other facilities;

(b) utilities and related services;

(c) garbage facilities and related services;

(d) laundry facilities;

(e) parking and storage areas;

(f) recreation facilities;

Section 5 of the Act provides as follows:

“This Act cannot be avoided

5 (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.”

I determined that an oral tenancy agreement exists between the parties as evidenced by the Rules. A party cannot unilaterally change a tenancy agreement. A change requires the consent of the other party.

I determined the landlord changed the provisions of the tenancy agreement which reduced the amount of hydro that the tenant was credited for before he had to pay extra. The tenant is entitled to recover the additional sums charged or the sum of $118.

Further I determined that the purported rent increases are of no force and effect as the landlord failed to follows the requirements of the Act. Section 34 to 36 provide as follows:

Part 4 — Rent Increases

Rent increases
34 A landlord must not increase rent except in accordance with this Part.

Timing and notice of rent increases
35 (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

(a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first payable for the manufactured home site;

(b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the **approved form (my emphasis).**

(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

Amount of rent increase
36 (1) A landlord may impose a rent increase only up to the amount

(a) calculated in accordance with the regulations,

(b) ordered by the director on an application under subsection (3), or

(c) agreed to by the tenant in writing.

(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

(4) [Repealed 2006-35-11.]

(5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

Conclusion:

In conclusion I made the following determinations:

- The Manufactured Home Park Tenancy Act Applies.
- The landlord cannot unilaterally change a tenancy agreement. The law does not permit a landlord to reduce or takeaway a service or facility without the agreement of the other party or as provided by the Act. The agreement provided that the first $75 per month of the hydro cost for the winter months was included with the rent. The landlord cannot

reduce this amount unless agreed to by the tenant or pursuant to an order from an arbitrator.

- As a result I determined the tenant has made an overpayment and is entitled to recover the $118 overpayment.
- The landlord's purported Notice of Rent Increase is significantly more that permitted by the Act. It does not comply with the Act as the landlord failed to use an approved form. As a result the Notice of Rent Increase that purports to increase the rent to $600 for the winter and $800 for the summer is of not force and effect.
- The rent remains at $435 per month payable in advance on the last day of the previous month.

I ordered the landlord(s) to pay to the tenant the sum of $118.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties.

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: December 27, 2018

Residential Tenancy Branch