



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PORT4HOMES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI, FFT, LRE, MNDCT, OLC

Introduction

This hearing that dealt with the tenant's application pursuant to the *Manufactured Home Park Tenancy Act* (the *MHPTA*) for:

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 60;
- an Order that the landlord's right to enter be suspended or restricted, pursuant to section 63;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 58;
- dispute of a rent increase from the landlord, pursuant to section 34;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 65.

Both parties 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. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Preliminary Issue- Severance

Residential Tenancy Branch (RTB) Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claims regarding the; disputing of a rent increase, an order to have the landlord comply with the *Act*, regulation or tenancy agreement, the landlords right to enter the site be suspended or restricted are not sufficiently related to

the tenants' monetary claim for compensation. The parties were given a priority hearing date in order to address the question of the priority issues.

The tenant's other claim is unrelated in that the basis for it rests largely on facts not germane to the question of the priority issues. I exercise my discretion to dismiss the tenants' monetary claim with leave to reapply.

Issue(s) to be Decided

Does the tenant have a basis to dispute the rent increase?

Is the tenant entitled to an order to have the landlord comply with the MHPTA, the regulations or the tenancy agreement?

Is the tenant entitled to an order limiting or restricting the landlords' access to enter the site?

Is the tenant entitled to the recovery of the filing fee for this application?

Background and Evidence

JH gave the following testimony. JH testified that her mother originally moved into the park in 1987. JH testified that her mother passed away in February 2018. JH testified that the landlord has continually acted in a "non-compliant way". JH testified that the landlord has issued rent increases since 2011 that are not in the approved form and therefore should be invalid. JH testified that the landlord entered her site on numerous occasions without just cause or permission. JH testified that the management has stopped carrying out their duties to maintain the park, specifically the tree maintenance. JH testified that the landlord should be ordered to comply with all rules, regulations and the MHPTA.

MM gave the following testimony. MM testified that the rent increase notice that they use mirrors the RTB form and that no tenant is misled or prejudiced by it. MM testified that it is strictly as a matter of administrative convenience that they use their own form. MM testified that the tenant was in fact a recipient of a lower rental increase because of their good standing and that nothing untoward had taken place. MM testified that the tenants' assertion that she had gone onto her site was simply not true except when posting a notice on the door. MM testified that the landlords and the administration follow all the rules and they do in fact maintain the park as required.

Analysis

Dispute Rent Increase-

JH submits that the landlord did not use the approved form and that should negate the rent increases as far back as 2011. MM submits that the rent increases given mirror the Branch forms and that Residential Tenancy Policy Guideline 18 allows them to use their own forms.

Residential Tenancy Policy Guideline 18 addresses reads as follows:

Under section 10 of the *Residential Tenancy Act* and *Manufactured Home Park Tenancy Act* the director may approve forms for the purposes of the Acts. Deviations from an approved form that do not affect its substance and are not intended to mislead do not invalidate the form used.

Using a form that is not approved by the Director may be valid if it contains the required information and is not intended to mislead.

If an application is made on an old form, an arbitrator may amend the form or accept the application as validly filed. The arbitrator may refuse to amend the current form if a respondent proves prejudice that is attributable to the use of the old form. An arbitrator may not amend a form which does not contain the required information.

I have reviewed the form submitted by the landlord and find that there is no prejudice to the tenant, quite the contrary. The landlord has applied the regulated increases and then reduced the amount as an incentive to good tenants to stay and “help them out a bit” as stated by MM. Based on the above, and the insufficient evidence before me, I dismiss this portion of the tenants claim.

Limit Landlords Right to Enter the Site & Order for the landlord to comply with the MHPTA, regulation or tenancy agreement –

The tenants did not provide sufficient evidence that the landlord was entering their site in breach of the MHPTA. MM stated that they observe and view properties outside of the site and only enter when a notice is required to be posted on the door. As a result, the tenant has also not provided sufficient evidence to have an order compelling the landlord to act in accordance with the MHPTA, regulation or tenancy agreement. Based on the insufficient evidence before me I dismiss this portion of the tenants’ application.

As the tenants have not been successful in their application, they are not entitled to the recovery of the filing fee.

It is worth noting that the issue of the tree maintenance is to be heard in a separate hearing in the near future as advised by both parties.

Conclusion

The tenants' application for a monetary order is dismissed with leave to reapply.
The remainder of the tenants' application is dismissed.

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: January 31, 2019

Residential Tenancy Branch