



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GEMINI VENTURES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR FF

Introduction

This hearing dealt with an application by the tenant pursuant to the *Manufactured Home Park Tenancy Act* ("the Act") for orders as follows:

- cancellation of the landlord's 10 Day Notice; and
- to recover the filing fee from the landlord for the cost of this application pursuant to section 65.

Both parties attended the hearing with the landlord being represented by agent M.M. The parties confirmed receipt of all evidence, while the tenant confirmed receipt of the landlord's 10 Day Notice to End Tenancy ("10 Day Notice") and the landlord confirmed receipt of the tenant's application for dispute resolution. All parties around found to have been duly served with all documents related to this dispute in accordance with the *Act*.

Issue(s) to be Decided

Can the tenant cancel the landlord's 10 Day Notice? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to a return of the filing fee?

Background and Evidence

The tenant explained she began living in the Park on May 1, 2014. Her current pad rental is \$380.38 per month, which she said is paid by pre-authorized cheque. On January 2, 2019 the landlord served the tenant with a 10 Day Notice. The amount cited on the 10 Day Notice was listed as \$432.57.

The tenant disputed that any money was outstanding for rent. She said she had paid all rent in advance through a series of post-dated cheques. The landlord acknowledged having received these cheques but explained the tenant had been in arrears since February 2018 due to a series of late fees which were applied to her rent, along with an unpaid plumbing bill of \$269.85 which he said was added to her rent. The landlord said that an issue with plumbing had arisen on the pad in October 2018 and these repair costs were passed onto the tenant. In December 2018 a demand letter was sent to the tenant for a return of the funds related to this plumbing service. The tenant said she disputed this letter to the landlord but took no further action. On January 2, 2019 a 10 Day Notice was issued to the tenant as a result of this unpaid plumbing invoice and various late charges for rent. The tenant argued that it was her understanding of an August 2018 settlement agreement reached by the parties before the Residential Tenancy Branch, that no late fees were due.

The landlord cited eleven separate late fees of various amounts. The landlord said; late fees of \$5.00 were due for February and March 2018, \$10.00 for April 2018, \$15.00 for February 2019 and \$25.00 for June, July, August, September, November and December 2018 along with January 2019.

A review of the August 9, 2018 settlement agreement reached between the parties listed the following terms.

During the hearing, the parties agreed to settle this matter, on the following conditions:

1. The parties agree that they will treat each other respectfully.
2. The parties agree that the Tenant will abide by the park speed limit of 15 kmh.
3. The parties agree that the Tenant will not play loud music after 10 pm.
4. The parties agree that the Tenant will provide rent cheques to the on site manager in advance of when the rent is due.
5. The parties agree that the Tenant may not travel into areas marked as no trespass.
6. The Landlord withdraws his application in full as part of this mutually settled agreement.
7. The Tenant withdraws her Application to dispute the 1 Month Notice dated June 5, 2018.

Analysis

Section 39(1) of the *Act* states as follows:

A landlord may end a tenancy if **rent** is unpaid on any day after the day it is due.

While section 39(6) of the *Act* notes:

If a tenancy agreement requires the tenant to pay utility charges to the landlord and the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them, the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

After having considered the testimony of both parties and following a review of the evidence submitted by both parties, I find the landlord has failed to demonstrate that any unpaid rent or utilities are due. The landlord said the \$432.57 figure represented an unpaid plumbing invoice, along with several late fees for rent. I find the invoice of \$269.85 for which the landlord seeks payment to fall beyond the scope of what could be considered a utility. This invoice relates to repair work performed not a service provided by a third party such as water or gas.

In addition to the unpaid plumbing invoice of \$269.85 the landlord sought to rely on late fees associated with rent as reason to issue a 10 Day Notice. As noted above, a 10 Day Notice can only be found to be valid when there is unpaid rent or utilities. I find charges related to late fees to be neither unpaid rent nor utilities and I accept the testimony of the tenant that rent is paid monthly by way of post-dated cheque. Section 1 of the *Act* defines rent as, “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 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).” Section 89(2) lists numerous regulations which may be made by the Lieutenant Governor in Council. For these reasons, I dismiss the 10 Day Notice dated January 2, 2019.

As the tenant was successful in her application, she may recover the \$100.00 filing fee from the landlord pursuant to section 65 of the *Act*. In place of a monetary award, the tenant may withhold \$100.00 from a future pad payment on **ONE** occasion.

Conclusion

The tenant was successful in cancelling the landlord's 10 Day Notice to End Tenancy dated January 2, 2019. This tenancy shall continue until it is ended in accordance with the *Act*.

The tenant may withhold \$100.00 from a future pad payment on **ONE** occasion.

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: February 5, 2019

Residential Tenancy Branch