



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KKBL VENTURES DBA WILDWOOD MOBILE HOME
PARK and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNR DRI**

Introduction

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

- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities pursuant to section 39; and
- An order to dispute a rent increase pursuant to section 36.

Both the tenant and the landlord attended the hearing. The landlord was represented by office coordinator, BS ("landlord"). As both parties were in attendance, service of documents was confirmed. The landlord acknowledged receiving the tenant's Application for Dispute Resolution Proceedings Package; the tenant acknowledged receiving the landlord's evidence. Both parties stated they had no issues with timely service of documents and were prepared to deal with the issues.

Preliminary Issue

The tenant advised that his hearing aid had recently stopped working and that he may ask parties to repeat themselves if he couldn't hear. Both the landlord and I agreed that we would repeat anything if asked by the tenant.

Preliminary Issue

The landlord testified that she had submitted 17 pages of evidence to support her claim. At the commencement of the hearing, I advised the landlord that I only received a two page outline of the landlord's submissions without any documentary evidence in support. I advised the landlord that she could provide oral testimony to support her position but I would not accept any further evidence from either party once the hearing commenced in accordance with Rule 3 of the Residential Tenancy Branch Rules of Procedure.

Issue(s) to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities be upheld or cancelled?

Should this tenancy be subject to a rent increase reduction?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The parties agree on the following facts. The tenants had been previously living in the manufactured home park for years in an RV located on a different site. The tenant purchased a manufactured home from another tenant living in the park. The previous tenant was paying \$748.00 per month for pad rental.

The landlord provided the following testimony. When the previous tenant moved out, the previous tenant did not submit a form RTB-10 Request for Consent to Assign a Manufactured Home Site Tenancy Agreement with the landlord. When the new tenant took possession of the manufactured home, he did not sign a tenancy agreement that the landlord gave him to sign. Repeated attempts were made to have the tenant sign the tenancy agreement, however the tenant never signed it. I note no copy of a draft tenancy agreement was provided as evidence by the landlord for this hearing.

Before the tenant took possession of the site, the landlord had repeated conversations with the tenant regarding the pad rental cost being \$1,050.00 per month. The fee for the storage of an RV is \$100.00 and the tenant had an RV that he wanted to store. The landlord testified that the RV storage fee is not included in the rent but that the parties entered into an oral agreement to allow the tenant to store his RV for an additional \$100.00 plus GST.

The landlord testified she didn't present the tenant with a separate written agreement regarding the RV storage contract because she had never drafted one for him to sign. This landlord had just taken over the office on April 29, 2019 and she had other responsibilities in the park.

The landlord testified that when the tenant took possession, the landlord received a cheque in the amount of \$1,050.00 from the tenant's notary for the June rent. On July 3rd, the tenant gave the landlord a cheque in the amount of \$748.00 for the July rent.

During a discussion with the tenant in the park office, the landlord advised the tenant again that the rent is \$1,050.00, not \$748.00. On July 19, the tenant paid the additional \$302.00.

By the end of July, the tenant was in arrears for \$102.76, representing a prorated amount of \$74.06 and \$3.70 GST, for an incomplete month of RV storage plus an additional \$25.00 in late fees.

On August 1, 2019, the tenant paid the \$1,050.00 rent, but did not pay the RV storage fees or GST, leaving a balance of \$207.76 owing.

On September 3, 2019, the tenant paid the \$1,050.00 rent, but not the RV storage fees or GST, leaving a balance of \$312.76 owing.

On October 1, 2019, the tenant did not pay the rent of \$1,050.00 nor did he pay the arrears owing of \$312.76, as calculated above. The total arrears, according to the landlord is \$1,467.76.

The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("Notice") on October 3, 2019 which indicates the tenant failed to pay rent in the amount of \$1,467.76 that was due on October 1, 2019. The effective date on the Notice is October 31, 2019. The landlord testified that she received \$748.00 of the arrears on October 7th, leaving \$719.76 owing from the original amount shown on the Notice. As of the date of the hearing, November 21, 2019, the tenant has not paid any rent for November or paid the November RV storage fee and GST.

The tenant provided the following testimony. He has been living in the manufactured home park for years and previously paid \$586.00 for the other pad rental. When he purchased the manufactured home from the previous tenant, the previous tenant advertised in his listing that the rent would be \$748.00 per month. No copy of the advertisement was provided as evidence. The tenant maintains that he was never asked to sign a tenancy agreement by the landlord.

The tenant agrees he had a conversation with the landlord in early July when he gave her the \$748.00 cheque for the rent. During this conversation, he was told by the landlord's co-manager that the RV storage would be \$80.00. Nothing was provided in writing for the tenant to sign regarding the RV fee.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Definitions

1 In this *Act*:

"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];

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a manufactured home site, use of common areas and services and facilities;

Start of rights and obligations under tenancy agreement

16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the manufactured home site.

Rules about payment and non-payment of rent

20 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.

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*.

In the case before me, the tenant argues that the landlord never presented him with a tenancy agreement to sign. This is vehemently denied by the landlord. I find the tenant's version of the facts that the landlord never asked him to sign a tenancy agreement to be implausible. As the landlord is conducting a business whereby they

collect rent pursuant to tenancy agreements, I find it reasonable to believe the landlord tried to get the tenant to sign a tenancy agreement and the tenant was unwilling to do so. Pursuant to section 16 of the *Act*, I find an implied tenancy agreement was entered into between the parties on June 4, 2019 when the landlord received the first rent payment from the tenant's notary in the amount of \$1,050.00 and tenant took possession of the manufactured home he purchased.

The tenant argues that his rent should be \$748.00 per month, the same as the previous tenant and that the \$1,050.00 being charged for his pad amounts to a rent increase. This argument cannot succeed as the tenancy agreement between this landlord and this tenant only began on June 4th. There was no existing tenancy agreement between the parties regarding this site prior to June 4th; the original payment of rent on June 4th established an original amount upon which the parties would be bound to for the next 12 months before a rent increase could be imposed in accordance with section 35. To be clear, the tenancy for \$748.00 rent was with a different tenant. The landlord is not obligated to provide this tenant with the same terms of tenancy as the previous tenant. As this is a new tenancy that commenced on June 4, 2019, I find the landlord has not increased the rent and dismiss the tenant's claim to dispute a rent increase.

When entering into a new tenancy agreement, a landlord has an absolute right to determine how much to charge for rent in the park; likewise a tenant has the right to not accept the initial cost of rent. The tenant's options are to accept the price or choose not to enter into the tenancy agreement and find a different place to rent. There is no option available in the *Manufactured Home Park Tenancy Act* for a tenant to enter into a tenancy and then negotiate the cost afterwards.

The landlord has shown tenant has been paying rent in the amount of \$1,050.00 per month for each of the months from June to September, despite the tenant's displeasure in paying this amount for rent. The parties have established that \$1,050.00 is the amount of rent to be paid in accordance with this tenancy agreement and I find the rent for the manufactured home site is \$1,050.00 per month.

The landlord clearly indicated throughout the hearing that the RV storage fee is a separate item from rent. The RV storage fee is subject to GST while the rent for the manufactured home site is not subject to GST. The tenant did not dispute that the RV storage fee is a separate item collected by the landlord.

I find that the evidence shows the RV storage is not part of the 'rent' as defined by section 1 of the *Act*. The RV storage fee is a separately scheduled fee collected for the

specific purpose of storing the tenant's RV. Turning back to section 20 of the *Act*, the landlord can end a tenancy for a tenant's failure to pay 'rent' when it is due under a tenancy agreement. As the RV storage fee is not 'rent', the outstanding fees for RV storage cannot be calculated as owing on the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The landlord has not succeeded in proving the tenancy should end for the tenant's failure to pay 'rent' in the amount of \$1,467.76. As such, the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on October 3, 2019 is cancelled and of no further force or effect.

I note here that the parties continue to disagree on the fee that the RV storage should be set at. I make no finding regarding this point and leave it to the parties to determine this amount. I encourage them to sign an agreement if the RV storage is to continue.

Conclusion

The tenant's application to dispute a rent increase is dismissed. Rent is set at \$1,050 per month payable on the first day of each month.

The landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is cancelled and of no further force or effect.

The tenancy shall continue with the rights and obligation remaining unchanged until ended in accordance with the *Act*.

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: November 23, 2019

Residential Tenancy Branch