



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNR

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held on January 28, 2020. The Tenant applied to cancel a 10-Day Notice to End Tenancy for Unpaid Rent (the Notice), pursuant to the *Manufactured Home Park Tenancy Act* (the "Act").

Both parties attended the hearing and provided testimony. The Landlord was present with his daughter, M.H. The Landlord confirmed receipt of the Tenant's evidence and Notice of Hearing package. The Landlord did not take issue with the service of this first package, and confirmed it was received sometime in December 2019. The Landlord stated he did not get the Tenant's more recent evidence package, which was uploaded to the dispute access site 3 days before the hearing. The documents in this package were emails between the Landlord and the Tenant. Even though the Tenant failed to serve these last minute emails, the emails were read to the Landlord and he confirmed that they were already received (as part of their initial email exchange), and the Landlord stated he had no issue with admitting these emails into evidence. As such, I allow the Tenant's late evidence, as the Landlord specifically agreed it was okay. I find the Landlord was sufficiently served with the Tenant's Notice of Hearing and evidence for the purposes of this hearing.

The Tenant confirmed receipt of the Landlord's evidence package and did not take issue with the service of this package.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenant requested additional time to submit evidence after the hearing because he stated he is banned from ServiceBC, does not have a reliable internet connection, and lives remotely, without the ability to mail documents. I asked the Tenant what evidence he needed extra time to submit, but he was unclear and did not sufficiently explain why extra time would be necessary. The Tenant did not explain whether or not any of his evidence is new and/or relevant to the issues on this application (non-payment of rent).

I note the Tenant filed his application on December 4, 2019, uploaded and served evidence shortly after that, and had around 1.5 months to prepare and serve all of his evidence. There are many ways to serve evidence under the Act, and despite being banned from ServiceBC, and other government offices, the Tenant could still have utilized one of the many methods of service under the Act. I find that, based on the lack of clarity regarding what, if any, additional relevant evidence was available and necessary for consideration of the issues on this application, the Tenant is not allowed further time to submit any further evidence. I extended the hearing time by half an hour in order to ensure both parties had a full chance to be heard.

The Tenant also suggested that he would like an adjournment, although he did not directly request one. The Tenant wanted more time to collect and serve evidence, although he was not clear on what evidence he needed to collect, and how it is relevant. The Landlord indicated that since there are issues with non-payment of rent, ending the tenancy is a time sensitive matter. The Landlord also stated that the house is damaged and in disrepair, and if the tenancy continues, there is additional risk to the Landlord's property. In consideration of the Tenant's adjournment request, I turn to Policy Guideline #45, which states the following with respect to whether or not an adjournment will be granted:

4. Possible prejudice to each party

A party might be prejudiced if they are likely to suffer financial loss as a result of the requested delay, or if possession of the rental unit is at issue. In such cases, the possibility of prejudice to one party must be weighed against the fairness of the opportunity to be heard.

I find the potential prejudice to the Landlord (potential financial and legal risks) outweighs the Tenant's opportunity to be heard, and I dismiss the Tenant's request for an adjournment. Both parties were given more time at the end of the hearing to provide testimony. Furthermore, I am mindful that the Tenant has already had almost two months since he filed this application in order to collect the necessary evidence.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
 - If not, is the Landlords entitled to an Order of Possession

Background and Evidence

Both parties agreed in the hearing that when the tenancy started in July 2016, there was no written tenancy agreement, and no security deposit paid. The Landlord explained that back in 2015, he noticed the Tenant was having a difficult time in life, as the Tenant did not have a place to park his trailer in one of the nearby towns, and was almost homeless. Both parties agree that the Landlord helped transport the Tenant's trailer onto the Landlord's farm in order to help the Tenant have an affordable place to live. The Landlord stated that rent was always set at \$200.00, and was payable in advance, by the first of the month.

The Landlord stated that the Tenant lived in his own trailer for "quite some time", and would only come and stay inside the Landlord's house (also on the property), when it was too cold. The Tenant would sometimes come into the house sporadically during the day. The Tenant confirmed that he would sometimes sleep in the house under the kitchen table when it was cold. The Tenant stated he stayed in the house "all the time" but was unable to elaborate further and clarify for which periods he stayed in the house.

The Landlord stated that he also had a fifth wheel trailer on the property which he allowed the Tenant to use temporarily while other repairs were being done in and around the Tenant's trailer.

The Landlord's daughter, M.H., was also at the hearing and stated that the Landlord, P.H., lived in a house on the property for many years, and only ever allowed the Tenant to move onto the property because he felt sorry for him. M.H. stated that in the fall of 2019, the Landlord became ill and required medical treatment in Vancouver, which is where he is currently staying indefinitely. M.H. stated that since that time, the Tenant had started to use the house more than he is allowed to, and as if he owns the house.

M.H. stated that the Landlord has severe medical issues and he has his children helping him with his affairs in a more involved way since October/November of 2019 (as power of attorney and/or as an agent for some matters.).

The Tenant stated that everything was going fine until the Landlord had to step away for health issues, because at that time, the Landlord's family stepped in. M.H. confirmed that she has become more involved with the property since the Landlord has become ill. After M.H. became involved, she stated the Tenant was reminded via email that rent was actually \$375.00, not \$200.00. M.H. pointed to the "Shelter Information" document which the Tenant filed with the ministry of social development in May of 2017. This document shows that the Tenant listed that his rent was set at \$375.00, that utilities are not included in rent, and that he does not share a kitchen or a bathroom with the Landlord.

The Tenant does not refute the information contained in this document, and stated that he receives this \$375.00 per month to help pay for his living accommodation. After discussion between the Landlord and the Tenant in the hearing, both of them agreed that the Tenant would receive \$375.00 per month from the government, as this is what the Tenant had listed for monthly rent on his shelter information document. The Landlord confirmed that he signed this shelter information document in May of 2017. Subsequently, the Landlord confirmed that he always allowed the Tenant to keep 175 of this shelter allowance. The Landlord confirmed that for the majority of the tenancy, the Tenant only had to pay \$200.00 per month.

The Landlord's daughter, M.H., stated that in November of 2019, she informed the Tenant that he would no longer be allowed to keep \$175 of his shelter payment, and that he would now be required to pay the full amount he listed on his shelter document, \$375.00. The Tenant stated it is not fair the amount of rent can be changed unilaterally.

The Tenant stated he paid rent for December 2019 in the amount of \$200.00 on November 20, 2019, by e-transfer (a copy of which was provided into evidence). The Landlord confirmed receipt of this payment. M.H. confirmed that she helped the Landlord draft up the Notice on December 1, 2019, stating that the Tenant still owed \$175.00. The Landlord provided a proof of service document showing that she served the Tenant, in person on December 1, 2019, with the Notice. The Tenant confirmed this is when he got it. The Tenant filed to dispute the Notice on December 4, 2019, because he paid all that he owed, \$200.00. The Tenant stated that the Landlord's daughter has effectively tried to increase the rent from \$200.00 to \$375.00 in the month of November, and when he did not pay the full amount, she assisted the Landlord in drafting up the Notice.

Analysis

In this review, I note that the onus is on the Landlord to prove the reason for the Notice, which in this case is non-payment of rent.

First, I find it important to note that the parties do not have a written tenancy agreement, and it appears there was a relatively informal arrangement where the Landlord did his best to help the Tenant, generally. It appears the situation became more acrimonious after the Landlord left the property for medical reasons, and his family members stepped in to assist.

It is not disputed that the Tenant was to pay his rent by the first of the month, and it appears the Tenant largely made these payments ahead of time, in the days leading up to the end of the month. The central issue is now regarding how much rent is due, not when it is due.

The Landlord does not dispute that he only required \$200.00 in rent, per month, from the start of the tenancy, until November of 2019, at which point M.H. began assisting with the Landlord's affairs. Although M.H. pointed to the shelter information document from May of 2017,

as evidence that the parties agreed to rent being \$375.00, rather than \$200.00, I find this is not a tenancy agreement. It is a document submitted to the government which helps establish what the Tenant is entitled to per month, based on how much his expenses are. Although the Tenant and the Landlord both had a role in drafting this document, and it lists \$375.00 as monthly rent, I find it important to note the Landlord explicitly stated that he only required \$200.00 per month from the Tenant, and he allowed the Tenant to keep \$175.00 to help pay for his living expenses. I further note this arrangement went on for the majority of the tenancy, until the fall of 2019, when the Landlord's family put the Tenant on notice that he should be paying the full amount listed on the shelter information document.

After considering the totality of the evidence and testimony on this matter, I accept there was no formal written tenancy agreement, and in making my determinations regarding what rent was, I must look at the testimony, evidence, and conduct of the parties over the tenancy. The Landlord confirmed that he only required \$200.00 per month, even after the shelter information document was submitted to the province in May of 2017. It appears this shelter information document was filled out and submitted in order to help the Tenant obtain a certain level of funding, rather than to strictly establish what the Tenant was required to pay the Landlord each month. If the Landlord expected the shelter information document to double as the tenancy agreement in terms of what the amount of rent was, then it is unclear why he continued to accept only \$200.00 after that document was submitted to the government. It appears the Landlord was trying to be kind to the Tenant to ensure he had enough money to live. In any event, I find the Landlord, or his agent, cannot unilaterally raise the rent to \$375.00 after years of only requiring \$200.00 per month, especially in the absence of a written tenancy agreement showing that rent was ever set at \$375.00.

As previously stated, I find the shelter information document is not a tenancy agreement, and given the pattern of rent payments over the years, I find monthly rent was only \$200.00. There is no evidence the Tenant ever paid \$375.00 in rent, or that this was expected, until the fall of 2019, when the Landlord's family became involved.

At the time the Notice was issued, on December 1, 2019, I find there is insufficient evidence that any rent was overdue, as the Landlord confirmed that they received \$200.00 in rent on November 20, 2019. I find The Tenant paid the required amount of rent in the amount of \$200.00, and there is insufficient evidence there was any other outstanding rent at that time. I find there is insufficient basis to uphold the Notice. As such, I cancel the Notice, and it is of no force and effect. The tenancy will continue until it is ended in accordance with the Act.

Conclusion

The Notice is cancelled, and the tenancy will continue until it is ended in accordance with the Act.

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 29, 2020

Residential Tenancy Branch