



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUMMERLAND BEACH RV CAMPGROUND
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNDC, FFL

Introduction

On October 2, 2019, the Landlord submitted an Application for Dispute Resolution under the *Manufactured Home Park Tenancy Act* for a monetary order for unpaid rent and a monetary order for money owed or compensation for damage or loss.

The matter was scheduled for a teleconference hearing. The Landlords agent (“the Landlord”) and the Tenants attended the hearing.

At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

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.

Issues to be Decided

- Is the Landlord entitled to a monetary order for unpaid rent?
- Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?

Background and Evidence

The Landlord and Tenants testified that the tenancy began on September 1, 2014. Site rent in the amount of \$511.00 was to be paid to the Landlord by the first day of each

month. Hydro electricity is not included in the rent. The Landlord provided a copy of the tenancy agreement. The tenancy ended on July 23, 2019.

The Landlord testified that the Tenants did not pay the site rent of \$572.88 for the month of July 2019.

In reply, the Tenant testified that when they moved onto the site on August 25, 2014, they paid the Landlord one month rent of \$511.00 in advance. The Tenant testified that they again paid site rent of \$511.00 a few days later on September 1, 2014. The Tenant submitted that they paid the last month rent at the start of the tenancy.

The Tenant testified that in addition to paying the last month of rent at the start of the tenancy, the Landlord applied illegal rent increases throughout the tenancy in 2015; 2016; and 2019. The Tenant testified that the increases were applied improperly as they were not 12 months apart.

In reply, the Landlord testified that there is no record that the Tenant paid \$511.00 on August 25 and on September 1, 2014 as suggested by the Tenant. The Landlord testified that the rent increases were applied on November 1, 2015; November 1, 2016; November 2017; and November 2018. The Landlord testified that there was no rent applied in 2019 as suggested by the Tenants. The Landlord agreed to provide the Notices of Rent Increase documents to the Residential Tenancy Branch and the Tenants.

Following the hearing, the Landlord provided notices of rent increase for 2015; 2016; 2017; and 2018.

Hydro

The Landlord testified that the Tenants are responsible to pay hydro costs. The Landlord testified that the Tenants failed to pay hydro bills. The Landlord is seeking to recover unpaid hydro costs as follows:

Hydro June 2019	\$69.79
Hydro July 2019	\$74.19

In reply, the Tenants testified that in 2018 the Landlord unilaterally raised the hydro costs by an additional 2%. The Tenants testified that the Landlord also increased the hydro costs by 10% for all Tenants of the park due to usage of a 110-volt circuit. The

Tenants testified that in addition, the Landlord did not provide copies of hydro bills to them.

In reply, the Landlord provided testimony acknowledging that the Landlord did add a 2% per kilowatt increase in order to recoup their losses. The Landlord testified that there are secondary plugs being used by park tenants and the Landlords costs were divided equally between occupants of the park. The Landlord testified that they increased the hydro bills by 2% but they did not add a 10% increase.

The Landlord testified that she wrote a letter to the occupants of the park and informed them of the increase.

Clean Up Costs

The Landlord testified that the Tenants left a mess on the rental site when they vacated. The Landlord testified that tires and garbage were left behind. The Landlord testified that the site needed to be cleaned up and the Landlord hired two people to clean up the site and take the garbage to the dump. The Landlord provided photographs of a pile of garbage with a tire and a gazebo like structure left on the rental site. The Landlord provided an invoice for 10 hours of effort at \$20.00 per hour for cleaning, removal, and dumping the garbage. The Landlord provide a receipt for dumping costs in the amount of \$14.70.

In reply, the Tenant testified that the Landlord took the photographs on the day the Tenants moved out. The Tenant testified that one of his neighbors wanted to move to his site, and another neighbor wanted his planters. The Tenant submitted that the Landlords invoice provides that there was 2000 kg of items disposed and the Tenant stated that he did not own all of that stuff. The Tenant also submitted that the invoice indicates the clean up was for lot B7 and the Tenant occupied lot B08.

In reply the Landlord testified that the invoice contained a typographic error, and that the invoice is for cleaning lot B08.

Analysis

Section 20 of the Act provides that 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.

Section 35 of the Act provides that a landlord must not impose a rent increase for at least 12 months after the date on which the tenant's rent was first established under the tenancy agreement; and at least 12 months after the effective date of the last rent increase made in accordance with this Act.

Section 35(6) of the Act provides that 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.

Unpaid Rent

I find that there is insufficient evidence before me to prove that the Tenant paid rent of \$511.00 on August 25, 2014 and another \$511.00 on September 1, 2014. The tenancy agreement makes no mention of such an agreement or transaction, and a tenant is only obligated to pay rent when it is due under the tenancy agreement.

I find that it is more likely than not that the Tenants did not pay the last month's rent at the start of the tenancy in August or September of 2014.

I find that the Tenants did not pay the rent owing under the tenancy agreement for the month of July 2019; however, I have considered the Tenants' testimony that the Landlord applied illegal rent increases.

I have considered whether or not the Tenants had a legal right to deduct all or a portion of the rent. Section 35(6) of the Act provides that the Tenants may deduct an illegal rent increase from rent or otherwise recover the increase.

I have reviewed the notices of rent increase provided by the Landlord. I find that the rent increase issued in 2015 was issued correctly. The rent increased from \$511.00 to \$523.78 each month. I find that the rent increase issued in 2016 and 2017 were not issued in accordance with the Act. The notice of rent increase for 2016 was effective May 1, 2016 which is less than 12 months from the previous rent increase. The notice of rent increase for 2017 signed by the Landlord on January 17, 2017, has the effective date blacked out and is unreadable.

I find that the Tenants were only required to pay rent of \$523.78 from November 1, 2015 onwards. I find that the Tenants paid an illegal rent increase from May 1, 2016 onwards.

and an additional illegal increase from May 2017 onwards. The Tenants have over paid the rent.

I find that the Landlord has provided insufficient evidence to prove that the Tenants owe rent in the amount of \$572.88 for July 2019. The Landlords claim is dismissed without leave to reapply.

Hydro Costs

Once a tenancy agreement is entered into any changes to the terms and conditions can only be made by mutual consent. I find that in 2018 or 2019 the Landlord unilaterally changed the term regarding the Tenants responsibility to pay hydro costs and added a 2% charge. The Landlord does not have authority to unilaterally apply an additional 2% hydro charge. I find that the Tenants over paid the Landlord for hydro costs.

I find that the Landlord has provided insufficient evidence to prove that the Tenants owe the amount claimed of \$143.98 for unpaid hydro costs for June and July 2019. The Landlords claim is dismissed without leave to reapply.

Clean Up Costs

The Landlords testimony that the Tenants left tires and garbage on the site is consistent with the photograph the Landlord provided showing a tire and a pile of garbage on the site and is consistent with the dumping invoice which includes a cost to recycle a tire. I accept the Landlords testimony that there was a typographical error on the invoice and that the invoice was for cleaning site B8.

The Tenants testimony suggests that he left some items behind but not 2000 kg of items. Upon review of the invoice I find that the Landlord was only charged for disposal of 120 kg of garbage and \$1.50 for a tire recycle fee. I find that it is more likely than not that the Tenant is responsible for the Landlords cost to clean the rental site and dispose of the garbage.

I grant the Landlord the amount of \$214.70 for site cleaning and dumping costs.

Section 65 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was partially successful with the claims, I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$314.70 comprised of \$214.70 for site cleaning costs; and the \$100.00 fee paid by the Landlord for this hearing. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

Conclusion

The Landlord established a monetary claim in the amount of \$314.70 and is granted a monetary order in the amount of \$314.70.

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 06, 2020

Residential Tenancy Branch