



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenant under the *Manufactured Home Park Tenancy Act* (the “Act”), seeking:

- Compensation for money owed or other monetary loss; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Tenant, who provided affirmed testimony. Neither the Landlord R.D. (the “Landlord”) nor an agent for the Landlord attended. The Tenant was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondent must be served with a copy of the Application and Notice of Hearing. As neither the Landlord nor an agent for the Landlord attended the hearing, I confirmed service of these documents as explained below.

The Tenant testified that the Notice of Dispute Resolution Proceeding Package, including a copy of the Application, the Notice of Hearing, and the documentary evidence before me for review, was sent to the Landlord by registered mail on January 24, 2020, at the address for service for the Landlord, which I have noted on the first page of this decision where the names of the parties are listed. The Tenant provided me with the registered mail tracking number and the Canada Post website confirms that the registered mail was sent as described above and received on January 29, 2020. The Canada Post website stated that the registered mail was delivered in the name of the Landlord and the postal code given by the Tenant for the Landlord in this hearing matched the postal code to which the registered mail was sent according to the Canada Post website. As a result, I find that the Landlord was served with the Notice of Dispute Resolution Proceeding Package, including a copy of the Application, the Notice of

Hearing, and the documentary evidence before me for review in accordance with the *Act* and the Rules of Procedure on January 29, 2020.

Rule 7.3 of the Rules of Procedure states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party. As I am satisfied that the Landlord was served with notice of the hearing in accordance with the *Act* and the Rules of Procedure and therefore had an opportunity to appear at the hearing in their defense, the hearing proceeded as scheduled despite their absence.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; however, I refer only to the relevant facts, evidence and issues in this decision.

At the request of the Tenant, copies of the decision and any orders issued in their favor will be emailed to them at the email address provided in the Application.

Preliminary Matters

At the outset of the hearing the Tenant acknowledged that one of the respondents, J.D., was not served with the Notice of Dispute Resolution Proceeding Package. As stated above, the Rules of Procedure state that the respondent must be served with a copy of the Application and Notice of Hearing and as J.D. was not served with the Notice of Dispute Resolution proceeding I therefore find that it would be administratively unfair and a breach of both the Rules of Procedure and the principles of natural justice to proceed against them as they were not notified of the hearing or the case against them or provided with an opportunity to appear in the hearing or submit evidence in their defense. Based on the above, I therefore amended the application to remove J.D. as a respondent in this matter.

The Tenant also stated that the other Applicant, D.V.G. is a tenant of a separate manufactured home site under a separate tenancy agreement and will be filing their own Application. As they are not rightfully a party to this proceeding, I therefore removed them as an Applicant in this matter.

The Tenant also stated that the Landlord (R.D.) is one of the owners of the named corporation which owns and operates the mobile home park and therefor both R.D. and the named corporation meet the definition of a landlord under the *Act*. The Tenant stated that in their previous Application with the Branch, the named corporation was named as the Landlord and that R.D. appeared on behalf of the name company. I have reviewed that decision based on the file number provided to me by the Tenant and I find

that both R.D. and the named corporation meet the definition of a landlord under the *Act*. As a result, I have amended the Application to also name the corporation as I find that the as the owner of the named company, R.D. and the named company are one and the same, and I have already found that R.D. was properly served in accordance with the *Act*.

Issue(s) to be Decided

Is the Tenant entitled to compensation for monetary loss or other money owed?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The Tenant stated that in a previous decision from the Branch, jurisdiction was accepted as it was found that a tenancy under the *Act* exists, and the Tenant was successful in their Application seeking the cancellation of three rent increases in 2017, 2018, and 2019, which were found not to comply with the requirements of the *Act* and regulation. In the hearing the Tenant provided me with the file number for this Application, which forms part of the Branch records, so that I could review this decision.

In that decision an Arbitrator found that a tenancy agreement under the *Act* exists and that the Tenant's rent had been unlawfully increased by the Landlord in 2017, 2018, and 2019. As a result, the Arbitrator ordered that the Tenant's rent is \$456.00, the amount of rent payable under the tenancy agreement after the last lawful rent increase effective June 1, 2016, and ordered that the Landlord comply with sections 34 to 36 of the *Act* with regards to future rent increases.

The Tenant stated that they did not seek monetary compensation for the amounts of rent that they overpaid in their previous Application as they were waiting for the outcome of that decision in order to determine the amounts overpaid. The Tenant stated that once they received the decision from the previous Arbitrator, they filed the Application before me for review seeking recovery of \$4,039.00 in overpaid rent. The Tenant stated that they paid \$550.00 per month between June 1, 2017 – May 31, 2018; \$600.00 per month between June 1, 2018 – May 31, 2019; and \$625.00 per month between June 1, 2019 – December 31, 2019 and as rent for that period was \$456.00, the amount paid each month above \$456.00 represents and overpayment of rent. The Tenant also sought recovery of the \$100.00 filing fee.

No one appeared on behalf of the Landlord to provide any evidence or testimony for my consideration.

Analysis

In a previous decision rendered by the Branch on December 4, 2019, an Arbitrator found that a tenancy agreement under the *Act* exists and that the Tenant's rent had been unlawfully increased by the Landlord in 2017, 2018, and 2019. As a result, the Arbitrator ordered that the Tenant's rent is \$456.00, the amount of rent payable under the tenancy agreement after the last lawful rent increase effective June 1, 2016, and that the Landlord comply with sections 34 to 36 of the *Act* with regards to future rent increases. No assessment of the amount of rent overpaid by the Tenant was made at that time.

In the hearing the Tenant advised me that they paid rent in the amount of \$550.00 per month between June 1, 2017 – May 31, 2018; \$600.00 per month between June 1, 2018 – May 31, 2019; and \$625.00 per month between June 1, 2019 – December 31, 2019. As there is no evidence before me to the contrary, I accept the Tenant's affirmed and undisputed testimony and find as fact that the Tenant paid the above noted rent amounts. As a result, I find that the Tenant over paid rent by:

- \$94.00 per month between June 1, 2017 – May 31, 2018, resulting in a \$1,128.00 overpayment;
- \$144.00 per month between June 1, 2018 – May 31, 2019, resulting in a \$1,728.00 overpayment; and
- \$169.00 per month between June 1, 2019 – December 31, 2019, resulting in a \$1,183.00 overpayment.

In total I find that the Tenant overpaid rent by \$4,039.00 between June 1, 2017 – December 31, 2019, and I therefore award the Tenant recovery of this amount from the Landlord.

As the Tenant was successful in their Application, I grant them recovery of the \$100.00 filing fee pursuant to section 65 of the *Act*. Pursuant to section 60 of the *Act*, the Tenant is therefore entitled to a Monetary Order in the amount of \$4,139.00. The Tenant may deduct this amount from any future rent payments due under the tenancy agreement in lieu of serving and enforcing this Monetary Order, should they wish to do so. In the event that the Tenant chooses to deduct the amounts owed from future rent and the tenancy ends before all amounts are recouped by the Tenant via these rent deductions,

the Tenant remains at liberty to serve the Monetary Order on the Landlord and the Landlord remains liable to pay the balance owed.

Conclusion

Pursuant to section 60 of the *Act*, I grant the Tenant a Monetary Order in the amount of **\$4,139.00**. The Tenant is provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court. As stated above, the Tenant may deduct this amount from any future rent payments due under the tenancy agreement in lieu of serving and enforcing this Monetary Order, should they wish to do so.

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: June 16, 2020

Residential Tenancy Branch