



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Ministry of Forests
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI, FFT

Introduction

This hearing was scheduled pursuant to a Tenant's Application for Dispute Resolution to dispute a rent increase that was anticipated by the applicant at the time of making the application.

Both parties appeared or were represented at the hearing. I confirmed the parties had exchanged their respective hearing materials upon each other and neither party took issue with service of materials upon them. As such, I admitted their respective materials into evidence for consideration in making my decision. I also confirmed that neither party was making an unofficial recording of the proceeding.

Preliminary and Procedural Matter(s)

The parties had executed a document on April 28, 2021, which was provided for my review, indicating the parties agreed to the following, among other things:

- The lease rate for the period of June 2021 through May 2022 shall not increase from that charged for the period of June 2020 through May 2021.
- The earliest the applicant shall be subject to a rent increase, if any, shall be June 2022.
- The respondent shall reimburse the applicant \$100.00 representing the filing fee paid by the applicant for this Application for Dispute Resolution.
- Rescheduling or adjournment of this proceeding until February 2022.

A hearing may be rescheduled with consent of both parties; however, Rule 5.1 of the Rules of Procedure provides that a request for rescheduling must be received by the Residential Tenancy Branch no less than three days before the hearing. Since the parties did not request a rescheduling three or more days before the hearing, the

hearing remained for today's date, as originally scheduled. As such, I proceeded to consider whether to adjourn the proceeding under Rule 7.8 of the Rules of Procedure.

Adjournments are provided for under Rule 7.8 through 7.11 of the Rules of Procedure and I have reproduced those rules below:

7.8 Adjournment after the dispute resolution hearing begins

At any time after the dispute resolution hearing begins, the arbitrator may adjourn the dispute resolution hearing to another time.

A party or a party's agent may request that a hearing be adjourned.

The arbitrator will determine whether the circumstances warrant the adjournment of the hearing.

7.9 Criteria for granting an adjournment

Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

7.10 Mandatory attendance

If the dispute resolution hearing is adjourned, the arbitrator will order the parties to attend on the date when the dispute resolution hearing will be reconvened.

If a party does not attend the reconvened hearing at the scheduled time, the arbitrator may commence, continue and conclude the hearing. Pursuant to Rule 7.3, the arbitrator may issue a decision and order in the absence of a party.

7.11 Refusing a request for adjournment

If the arbitrator determines that an adjournment should not be granted, the dispute resolution hearing will proceed as scheduled.

When a request for adjournment is refused, reasons for refusing the request will be provided in the written decision.

The applicant confirmed that when he filed this Application for Dispute Resolution in anticipation that he would receive a rent increase for June 2021 although he has now received written communication that he will not receive a rent increase for June 2021. Although the anticipated dispute did not and will not occur, the parties seek a determination as to whether the *Manufactured Home Park Tenancy Act* ("the Act") applies to the subject lease agreement as the respondent may attempt to increase the rent in the future. However, neither party intended or was prepared to make submissions with respect to jurisdiction at this time and intend to do so at a later date if the hearing is adjourned.

Section 6(2) of the Act sets out that a landlord or a tenant may make an Application for Dispute Resolution if the parties cannot resolve a dispute referred to in section 51(1) of the Act. Section 51(1) of the Act provides (with my emphasis underlined):

Determining disputes

51 (1) Except as restricted under this Act, a person may make an application to the director for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of any of the following:

- (a) rights, obligations and prohibitions under this Act;
- (b) rights and obligations under the terms of a tenancy agreement that
 - (i) are required or prohibited under this Act, or
 - (ii) relate to
 - (A) the tenant's use, occupation or maintenance of the manufactured home site, or
 - (B) the use of common areas or services or facilities.

In this case, this Application for Dispute Resolution was filed with an anticipation that the rent would be increased an excessive amount in June 2021; however, I heard there has been no notification of a rent increase for June 2021 and the respondent's legal counsel has communicated to the applicant, in writing, that the rent will not be increased for June 2021. As such, I find issue raised by the applicant on his Application for Dispute Resolution does not reflect a dispute that requires resolution.

Although both parties were agreeable to adjourning this case to February 2022, I am unsatisfied there will be a dispute to resolve in February 2022 since the next earliest rent increase, if any, will be in June 2022.

In hearing from both parties, it appears to me that the parties are now seeking a declaratory judgement as to applicability of the Act; however, I do not have the authority to issue a declaratory judgement in the absence of an actual dispute, in keeping with sections 6(2) and 51(1) of the Act. Accordingly, I am unsatisfied that adjourning this proceeding will result in resolution of a dispute since there is no outstanding dispute to resolve under this Application for Dispute Resolution.

After providing the parties with my preliminary findings, consistent with the above, the applicant stated that he believes he may have paid an unlawful rent increase in years past; however, no such dispute was set out on this Application for Dispute Resolution and it would be procedurally unfair to make a determination on that when such claims have not been set out and served upon the other party.

In light of all of the above, I find the applicant as not sufficiently set out a dispute that requires resolution at this time and I decline to accept the Application for Dispute Resolution pursuant to section 52(5)(a) of the Act, which provides:

(5)The director may refuse to accept an application for dispute resolution if

(a) in the director's opinion, the application does not disclose a dispute that may be determined under this Part,

Having declined to accept the Application for Dispute Resolution as it has been filed, it is dismissed with leave to reapply. The applicant may reapply should the applicant have a dispute with the respondent that requires resolution and the applicant remains of the position that the Act applies.

For added certainty, I make no finding that the Act applies, or does not apply, to the subject lease agreement or the property.

Conclusion

The Application for Dispute Resolution did not sufficiently set out a dispute that requires resolution and I declined to accept the Application for Dispute Resolution.

I have made no finding as to whether the *Manufactured Home Park Tenancy Act* applies to the subject lease agreement or property with this decision.

Should the applicant have a dispute to resolve and be of the position the *Manufactured Home Park Tenancy Act* applies he may make another Application for Dispute Resolution to seek resolution.

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: April 29, 2021

Residential Tenancy Branch