



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on December 11, 2020, wherein the Tenant sought an Order canceling a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities issued on December 8, 2020 (the "Notice").

The hearing of the Tenant's Application was scheduled for 11:00 a.m. on March 18, 2021. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

Hearings before the Residential Tenancy Branch are conducted in accordance with the *Residential Tenancy Branch Rules of Procedure*. *Rule 4.2* of the *Rules* allows me to amend an Application for Dispute Resolution in circumstances where the amendment might reasonably have been anticipated. The authority to amend is also provided for in section 64(3)(c) of the *Act* which allows an Arbitrator to amend an Application for Dispute Resolution.

On the Application the Tenant named M.M., who is the acting manager for the community and is a Director and shareholder. She confirmed that her father, M.W., who was named on the tenancy agreement incorporated the company in November 2017. She stated that the Tenants were informed in 2017 that the company was incorporated and that the company would take over management of the property as the named Landlord.

I therefore Amend the Tenant's Application to correctly name the Landlord as the incorporated company.

Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenant applied for dispute resolution and is the Applicant, the Landlord presented their evidence first.

A copy of the residential tenancy agreement was provided in evidence: the tenancy agreement was signed on May 20, 2014; the agreement did not provide a date the tenancy began, nor did the agreement indicate the amount of rent. M.M. testified on behalf of the Landlord and stated that when the tenancy began rent was \$435.00 per month; to determine this she referred to a reconciliation which was not in evidence before me.

M.M. stated that their practice is to raise rent annually by providing notice in the September of the preceding year; as such this Tenant's first rent increase was in 2016. On September 15, 2015 they issued a Notice of Rent Increase, which was to commence January 1, 2016. The increase was \$16.51 such that the Tenant was to pay \$471.51. The Tenant was entitled to a \$20.00 rebate such that his monthly payment was \$451.51 after his rebate. M.M. then testified that on September 15, 2016 they issued another Notice of rent increase, which was to commence January 1, 2017. The increase was for \$18.41 such that the Tenant was to pay rent in the \$489.92. M.M. confirmed that they continued to raise rent annually pursuant to the allowable amount, in addition to "pass throughs", which M.M. stated was public utility fees and taxes.

M.M. confirmed that the Tenant's current rent is \$521.52 which includes his \$20.00 rebate. This sum was confirmed in the Notice of Rent Increase provided in evidence before me. M.M. testified that the Tenant failed to pay rent as required for December 2020 such that the sum of \$521.52 was outstanding.

The Notice was issued on December 8, 2020. M.M. stated that she personally served the Notice on the Tenant on December 8, 2020. The Landlord provided a proof of service in the materials. M.M. stated that the Tenant did not pay the December 2020 rent, although he did apply to dispute the Notice.

M.M. stated that Tenant also did not pay the January rent. The pre-authorized payment was completed for the February rent. The Tenant did not pay the March rent.

M.M. confirmed they issued a rent increase for 2021, but because of the rent freeze, the increase did not come into effect.

M.M. confirmed that as of the date of the hearing, \$1,564.56 was outstanding for rent. She confirmed this figure did not include the N.S.F. and late fees of \$97.50. She stated that they were willing to waive all those fees.

In terms of the \$20.00 rebate, M.M. stated that this is a "good tenant incentive" and they give it to all their tenants who they presume are good tenants until they are not. In terms of when that is removed, M.M. stated that is when people refuse to mow their lawn, or as an incentive to get them to do what they are supposed to do. M.M. stated that a financial incentive was not going to change this situation and as such they never removed it from this Tenant's rent. M.M. confirmed that the \$20.00 was added to the rent amount when determining the contracted rent that was payable when determining any rent increases.

In response the Tenant testified as follows. He confirmed that he moved into the park in October 2001. He stated that he initially worked around the house in exchange for rent.

The Tenant stated that he purchased the manufactured home in 2014. He confirmed that his original rent was \$435.00. The Tenant also confirmed that his rent was due on the first of the month.

The Tenant stated that he did not understand what the \$20.00 rebate was, and only saw it on the Notice of Rent Increase.

The Tenant also testified that his rent in 2020 was \$521.52 per month, payable on the first of the month. The Tenant confirmed that he did not pay his December rent on time. He stated that he was transitioning from CERB to EI, had no income for a period of time and was simply not able to pay. The Tenant also confirmed that he did not pay his January rent on time. He stated that he started to get his EI cheques in February and as such he received those funds and paid his rent. The Tenant also stated that he did not pay his March rent. The Tenant agreed that his rent was outstanding in the amount of \$1,564.56. The Tenant stated that he did not offer the Landlord “cash in hand” but did tell her he was able to pay.

The Tenant’s advocate noted that the Tenant has lived here for a number of years and has always paid his rent. The Tenant’s advocate stated that these three months are an abnormality and due to the extraordinary year 2020 was. He was laid off from his work and without income. The Advocate also submitted that the Tenant was also extremely ill which has prevented him from following through on financial and health matters. The Tenant had no working cell phone and collapsed and was in hospital from March 5-15. He has lost over 60 lbs in the last year, and suffered mobility and cognitive impairment for unknown reasons.

M.M. confirmed that she was aware of the Tenant’s health issues and was concerned for his well being. She stated that even if the Landlord were granted an Order of Possession, they would give the Tenant a license to occupy and continue to accept payment for use and occupancy until such time as the Tenant was able to sell his manufactured home. M.M. assured the Tenant and his advocate that she would work with the Tenant to assist him in a reasonable transition to more supportive housing.

Analysis

The Landlord issued the Notice pursuant to section 39 which reads as follows:

Landlord's notice: non-payment of rent

39 (1)A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2)A notice under this section must comply with section 45 *[form and content of notice to end tenancy]*.

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the manufactured home site to which the notice relates by that date.

(6) If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

The parties agreed as to the current rent. I therefore find the Tenant was obligated to pay rent in the amount of \$521.52. The parties also agreed that rent was due on the first of the month. The evidence confirms the Tenant did not pay his December 2020 rent on time, nor did he pay his January 2021 and March 2021 rent.

Section 20 of the *Act* provides that a Tenant must pay rent when rent is due unless the Tenant has a valid legal reason to withhold rent. Those reasons are as follows:

1. When the Landlord accepts rent over and above the allowable amount (section 36(5));
2. When an Arbitrator authorizes a Tenant to withhold rent (section 65(2)); and,
3. When the Tenant makes emergency repairs under the circumstances prescribed in section 27 of the *Act*

While the Tenant's financial and health circumstances are extremely unfortunate, they do not meet the strict exceptions noted above. As such I find the Tenant did not have a

valid legal reason to withhold rent. I therefore find the Landlord has proven the reasons for issuing the Notice.

Consequently, I also dismiss the Tenant's request for an Order canceling the Notice.

Section 48 of the *Act* provides as follows:

Order of possession for the landlord

48 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the manufactured home site if

(a) the landlord's notice to end tenancy complies with section 45 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have reviewed the Notice and find that it complies with section 45 in terms of form and content. As such, and pursuant to section 48, I must grant the Landlord an Order of Possession effective April 30, 2021.

I am confident the Landlord will honour their assurances to assist the Tenant in selling his home and moving to move supportive housing.

Conclusion

The Tenant's request for an Order canceling the Notice is dismissed without leave. The Landlord is entitled to an Order of Possession.

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 1, 2021

Residential Tenancy Branch