



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, MNDCT, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on May 27, 2021 (the "Application"). The Tenant applied for the following relief, pursuant to the *Manufactured Home Park Tenancy Act* (the "Act"):

- to dispute a rent increase;
- a monetary order for compensation; and
- an order granting recovery of the filing fee.

The Tenant, the Tenant's Advocate T.F. and the Landlord attended the hearing at the appointed date and time. The Landlord confirmed having received the Tenant's Application and documentary evidence package. As there were no issues raised with respect to service of these documents, I find that they were sufficiently served pursuant to Section 82 of the *Act*.

The Landlord stated that she did not provide any documentary evidence in response to the Application as she was not aware that the Applicant was the Registered owner of the Mobile Home. Instead, the Landlord was of the impression that the Applicant's Mother was still the owner, however, she has since passed away. As such, the Landlord did not serve any documentary evidence to the Applicant.

The Applicant confirmed that his mother passed away and that he has occupied the mobile home for the past 37 years. As such, I find that the Applicant is a Tenant and that the Landlord was not prevented from responding to the Application or serving documentary evidence to the Applicant.

The Landlord stated that she has since sold the Mobile Home Park in August 2021. As such, she is no longer the Landlord. I accept that the Tenant submitted the Application

to the Landlord while she was the owner of the Mobile Home Park, as such, I find that the Application was served to, and named the proper Landlord.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling the Notice of Rent Increase, pursuant to Section 36 of the Act?
2. Is the Tenant entitled to a monetary order for compensation, pursuant to Section 60 of the Act?
3. Is the Tenant entitled to an order granting the return of the filing fee, pursuant to Section 65 of the Act?

Background and Evidence

The Tenant stated that he has occupied the Mobile Home since January 1, 1984. The Tenant stated that currently, he is required to pay a pad rent in the amount of \$150.00 to the Landlord on the first day of each month. The Landlord stated that she purchased the Mobile Home Park in August 2020 and sold the Park in August 2021.

The Tenant's Advocate stated that the Tenant has only been required to pay a pad rent during the entire tenancy, which includes utilities. The Tenant's Advocate stated that once the Landlord purchased the property in August 2020, she notified the Tenant that he would be required to pay an additional \$51.35 for utilities each month. The Tenant's Advocate stated that the Tenant did not agree to the additional charge, however, paid the additional amount to the Landlord from November 2020 to May 2021 regardless as he was urged to do so.

The Tenant's advocate stated that the Tenant reverted back to paying \$150.00 from June 2021 moving forward. The Tenant is under the impression that the Landlord was not permitted to introduce a new charge for utilities. As such, the Tenant is seeking monetary compensation in the amount of ($\$51.35 \times 7 \text{ months} = \359.45).

The Landlord responded by stating that the Occupants at the Mobile Home Park had not received any rent increases since 2014. As such, when she purchased the Mobile Home Park in August 2020 she notified the Occupants that they would be required to start paying utilities which they used and had not been charged for in the past.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Requirements for tenancy agreements

- 13** (1) A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.
- (2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:
- (a) the standard terms;
 - (b) the correct legal names of the landlord and tenant;
 - (c) the address of the manufactured home site;
 - (d) the date the tenancy agreement is entered into;
 - (e) the address for service and telephone number of the landlord or the landlord's agent;
 - (f) the agreed terms in respect of the following:
 - (i) the date on which the tenancy starts;
 - (ii) if the tenancy is a periodic tenancy, whether it is on a monthly or other periodic basis;
 - (iii) if the tenancy is a fixed term tenancy, the date on which the term ends;
 - (iii.1) if the tenancy is a fixed term tenancy in circumstances prescribed under section 89 (2) (a.1), that the tenant must vacate the manufactured home site at the end of the term;
 - (iv) the amount of rent payable for a specified period;
 - (v) the day in the month, or in the other period on which the tenancy is based, on which the rent is due;
 - (vi) which services and facilities are included in the rent;**

(g) if a park committee or the landlord has established park rules in accordance with section 32 *[park rules]* for the manufactured home park, the park rules.

(3) Within 21 days after a landlord and tenant enter into a tenancy agreement, the landlord must give the tenant a copy of the agreement.

Changes to tenancy agreement

14 (1) A tenancy agreement may not be amended to change or remove a standard term.

(2) A tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.

(3) The requirement for agreement under subsection (2) does not apply to any of the following:

- (a) a rent increase in accordance with Part 4 of this Act;
- (b) a withdrawal of, or a restriction on, a service or facility in accordance with section 21 *[terminating or restricting services or facilities]*;
- (c) park rules established in accordance with section 32 *[park rules]*;
- (d) a term in respect of which a landlord or tenant has obtained an order of the director that the agreement of the other is not required.

In this case, the parties agreed that the Landlord imposed a charge of \$51.35 for the use of utilities. The Tenant stated that utilities had been included in his pad rent of \$150.00. The Landlord stated that the previous owners had not increased any of the rent at the Mobile Home Park, therefore, she decided to impose a charge for utilities at the Mobile Home park.

I find that the Landlord was not at liberty to unilaterally decide to impose a charge for utilities in the amount of \$51.35. I find that by doing so, the Landlord changed the terms of the tenancy agreement, without the agreement of the Tenant. As such, I find that the Tenant is entitled to the return of the overpayment of \$51.35 from November 2020 to May 2021 (\$51.35 x 7 months = **\$359.45**). I accept that the Tenant has returned to paying \$150.00 to the Landlord each month since June 2021.

As I found that the Tenant was successful with his Application, I find that he is entitled to the recovery of the **\$100.00** filing fee. Pursuant to Section 60 of the Act, I grant the Tenant a monetary order in the amount of \$459.45.

Conclusion

The Tenant has demonstrated an entitlement to and has been provided with a monetary order in the amount of \$459.45. The Monetary Order should be served to the landlord as soon as possible and may be enforced in Small Claims Court.

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: September 27, 2021

Residential Tenancy Branch