



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Creekside Campground and RV
Park and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **FFT, OLC, MNDCT, DRI**

Introduction

This hearing dealt with an application filed by the tenant pursuant to the Manufactured Home Park Tenancy Act (the “Act”) for:

- An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 55;
- Authorization to recover the filing fee from the landlord pursuant to section 65;
- A monetary order for damages or compensation pursuant section 60; and
- An order to dispute a rent increase above the amount allowable under the Act pursuant to section 36.

The landlord did not attend this hearing which lasted approximately 20 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The tenant attended the hearing accompanied by their supporters and their advocate, PL. The parties in attendance were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

At the outset of the hearing, the tenant testified that they had erroneously indicated this application is being made under the Residential Tenancy Act on the initial application for dispute resolution. Pursuant to my power to amend an application under section 57(3) of the *Act*, I amend the landlord’s application for dispute resolution to make this application under the appropriate *Act*.

The tenant's support worker testified that they served the landlord personally with the notice of hearing and evidence by dropping off with an agent of the landlord on January 19, 2022. The tenant's witness confirmed that they were present when the support worker served the materials on the landlord's agent. Based on the undisputed evidence I find the landlord duly served with the tenant's materials in accordance with sections 81 and 82 of the *Act*.

At the outset of the hearing the tenant requested to amend the amount of their monetary claim in their application saying that additional overpayments have been made. Pursuant to section 57(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure as additional overpayments being made is reasonably foreseeable, I amend the tenant's application to increase their monetary claim to \$550.00.

Issue(s) to be Decided

Should the landlord be ordered to comply with the *Act*, regulations or tenancy agreement?

Is the tenant entitled to a monetary award as claimed?

Is the tenant entitled to recover their filing fee from the landlord?

Is the tenant entitled to relief from a disputed rent increase?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This manufactured home park tenancy began on June 6, 2015. The current monthly rent is \$550.00 payable on the first of each month. The rent was raised by a notice dated February 26, 2020 by \$25.00 from \$525.00 as of July 1, 2020. The tenant has paid the amount of \$550.00 from July 1, 2020 onwards.

The tenant now seeks to dispute the notice and revert the monthly rent to its original amount and for a monetary award for the amount of overpayment which they calculate to be \$550.00.

Analysis

The tenant made some submissions regarding the jurisdiction of the Branch and the Act. The landlord did not attend the hearing to dispute jurisdiction.

I find, on a prima facie basis, that there is a valid and enforceable tenancy agreement between the parties that falls under the jurisdiction of the Act and Branch. I accept the undisputed evidence that there is an agreement between the parties wherein the tenant has been paying monthly rent for the use of the manufactured home site, common areas and services or facilities.

I accept the evidence of the tenant that monthly rent was \$525.00 until increased by a typewritten letter dated February 26, 2020. I find that the correspondence issued by the landlord does not meet the requirements of a rent increase pursuant to section 35(3) as it is not in the approved form, does not identify the address of the manufactured home site or the parties and is not signed. I further find that the amount of the increase exceeds the maximum allowable rent increase of 2.6% in 2020 in contravention of section 36(1).

I accept the evidence of the tenant that they did not agree to such a rent increase in writing or at all.

Under the circumstances, I find that the notice of rent increase, which breaches sections 35 and 36 of the *Act*, has no force or effect and the monthly rent for this tenancy is restored to \$525.00 until increased in accordance with the *Act*.

I accept the undisputed evidence of the tenant that they have made payments of \$550.00 from July 1, 2020 to the present date and there is an overpayment of \$550.00 for this tenancy.

Pursuant to section 36(5) of the Act, I find the tenant is entitled to a monetary award in the amount of \$550.00 for the recovery of the overpayment.

As the tenant was successful in their application they are entitled to recover their filing fee from the landlord.

Pursuant to section 36(5) the tenant may deduct their monetary award from their next scheduled rent payments to recover their award.

Conclusion

This matter falls within the jurisdiction of the Act and Branch.

I restore the monthly rent for this tenancy to \$525.00.

I issue a monetary order in the tenant's favour in the amount of \$650.00. As this tenancy is continuing I allow the tenant to satisfy their monetary award by making deductions from their next scheduled rent payments until this award is satisfied.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 7, 2022

Residential Tenancy Branch