



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC DRI OLC FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Manufactured Home Park Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (1 Month Notice) pursuant to section 40;
- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 36; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 55;
- authorization to recover the filing fee for this application, pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application"). In accordance with section 82 of the *Act*, I find that the landlord duly served with the tenant's application. As all parties confirmed receipt of each other's evidentiary materials, and they were prepared to proceed with the scheduled hearing, the hearing proceeded to deal with the tenant's application.

The tenant confirmed receipt of that the 1 Month Notice to End Tenancy for End of Employment (the 1 Month Notice) dated March 2023, which was served to the tenant by way of registered mail. In accordance with sections 81 and 82 of the *Act*, I find the tenant deemed served with the 1 Month Notice 5 days after mailing.

Issues

Should the landlord's 1 Month Notice be cancelled?

If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to a determination regarding their dispute of an additional rent increase by the landlord?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

The tenant has been residing in her mobile home at the manufactured home site since 2012. Her parents were owners of the property. The tenant also worked for the company who was assisting in the management of the park. The tenant submits that they never paid any pad rental until they purchased the mobile home in January 2021, and began to pay rent for the pad in the amount of \$388.89 per month. In December 2021, the current landlord purchased the property. Rent was increased to \$394.82 effective January 2022. For accounting purposes, both parties had agreed that the rent would be set at \$400.00, as shown on the pay stub submitted by the tenant.

The tenant was asked to continue working part-time when the new landlord took over the property. The tenant gave 2 week's notice to end their employment on August 19, 2022 because of their health. In November 2022 the tenant was presented with a new tenancy agreement for rent in the amount of \$600.00. No Notice of Rent Increase in the proper form has been issued to the tenant. The tenant filed this application disputing the rent increase on January 13, 2023 as the tenant was never presented with a proper Notice of Rent Increase, and the amount exceeded the allowable amount. The tenant has been paying the \$600.00 while awaiting a resolution to this matter.

On March 202, 2023, the tenant was served with a 1 Month Notice to End Tenancy for End of Employment, with an effective date of April 30, 2023.

The landlord provided the following reasons for ending the tenancy:

- 1) Tenant's rental site is provided by the employer to the employee to occupy during the term of employment and employment is ended;
- 2) Tenant's rental site is part of the tenant's employment as a caretaker, manager, or superintendent of the property. The tenant's employment has ended, and the landlord intends to rent or provide the rental unit/site to the new caretaker, manager, or superintendent.

The tenant amended their application to dispute the 1 Month Notice on March 29, 2023 as the tenant's position is that their manufactured home site was not rented out or provided to the tenant to occupy as a term or condition of their employment, or as part of their employment as a caretaker or manager at the park. The tenant's position is that their rent was never subsidized nor a benefit provided as part of their employment, and that their pad rent was the same as similar pad rentals in the park. The tenant's position is that there was never any discussion, agreement, or conversation that would indicate that the tenant's occupation of the site was a condition of their employment at the park, and that a different site was designated as the manager's residence.

The tenant submitted in evidence a copy of the Bill of Sale dated January 29, 2021, a copy of the Rent Rolls dated December 1, 2021, proof of payment of their pad rent, and a pay stub. The tenant also submitted a rent roll for 2020, which has a notation that the two of the pads, including the tenant's pad site, are occupied by family members, and were not being charged pad rent in 2020 or prior to that. There is also a note that stated these tenants "are aware that pad rents are payable if the property is sold", and an additional note that one additional site is for "the office/store/manager's residence and is currently rented to a family member".

The landlord only submitted one document in evidence, which is a letter that was sent to the previous owners on May 2, 2023 requesting that they "clarify which is the true state of affairs in relation to [the tenant's] payment or non-payment of rent". The landlord confirmed in the hearing that they have not received a response to that letter.

The landlord argued that they felt that the tenant's pad rental was a condition of their employment at the park, and argued that the pay stub submitted by the tenant shows the tenant's rent, which was rounded up to \$400.00 for accounting purposes. The landlord argued that this shows how the tenant's employment was linked to their tenancy at the manufactured home park.

The landlord argued that new tenancies are now rented out at \$600.00 per month, and now that the tenant's employment had ended, they should be entering into a new tenancy agreement as a tenant at this current rate.

Analysis

Section 41(5) of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may dispute the 1 Month Notice by filing an application for dispute resolution within ten days after the date the tenant receives the notice. As the tenant filed their application within the required time, the onus, therefore, shifts to the landlord to justify the basis of the 1 Month Notice.

In light of the conflicting testimony between both parties, I am not satisfied that the landlord has established on a balance of probabilities that the pad rental was provided as a term, benefit, or condition of their employment at the manufactured home park, nor am I satisfied that the rental site is part of the tenant's employment as a caretaker, manager, or superintendent of the property, and the landlord intends to rent or provide the rental unit/site to the new caretaker, manager, or superintendent.

I note that the landlord has not provided any documentary evidence to support that the site was provided to the tenant as a condition of their employment at the park, or that the tenancy would end upon termination of the tenant's employment there.

Although it is undisputed by the tenant that they were a family member of the previous owners, I find that the tenant had provided sufficient evidence to support that they have been paying monthly pad rent since January 2021. While the pay stub submitted does note the tenant's monthly pad rent, the pay stub references wages as a separate line on the pay stub. I find that the pad rental is simply deducted from the overall payout, and does not prove that the pad rental is a benefit or term of their employment.

I find that the 2020 Rent Roll shows that a different site than the tenant's was designated as the manager's residence. I find that the 2021 Rent Roll shows that the two sites occupied by family members were now paying \$389.99 per month. There is no reference to any benefits or subsidies linked to employment.

In light of the evidence and testimony before me, I am not satisfied that the landlord has provided sufficient evidence to support that the pad site was provided or rented out by the employer to the employee to occupy during the term of employment, or that the rental site is part of the tenant's employment as a caretaker, manager, or superintendent of the property. I find that the evidence does not support a relationship between the amount of rent paid and the tenant's status as a employee at the manufactured home park. Accordingly I am granting the tenant's application for

cancellation of the 1 Month Notice. The 1 Month Notice dated March 20, 2023 is cancelled, and the tenancy is to continue until ended in accordance with the *Act*.

Section 35 of the *Act* stipulates that a notice of rent increase must be provided 3 months in advance of the increase and be in the approved form, available on the RTB website; a verbal or written demand does not comply with this requirement. I find that the tenant has not been provided with a Notice of Rent Increase in accordance with sections 35 and 36 of the *Act*. The monthly rent for this tenancy is hereby reduced to **\$400.00**. This monthly rent remains in effect until increased in accordance with the *Act*. I order that any future rent increases the landlord wishes to impose must be imposed on accordance with the *Act* and legislation.

Section 35(5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase. I allow the tenant to reduce future monthly rent payments until they have recovered the additional rent paid that exceeded \$400.00 per month. If this is not possible, I order that the landlord provide the tenant with a lump sum payment of this amount.

As the tenant was successful with this application, I also allow the tenant to recover the \$100.00 filing fee. I allow the tenant to implement a monetary award of \$100.00 for recovery of the filing fee by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$100.00, 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.

Conclusion

The landlord's 1 Month Notice to End the Tenancy dated March 20, 2023 is cancelled and is of no continuing force or effect. This tenancy is to continue until ended in accordance with the *Act*.

The monthly rent for this tenancy is reduced to **\$400.00**. This monthly rent remains in effect until increased in accordance with the *Act*. I order that any future rent increases the landlord wishes to impose must be imposed on accordance with the *Act* and legislation.

I allow the tenant to reduce future monthly rent payments until they have recovered the additional rent paid that exceeded \$400.00 per month. If this is not possible, I order that the landlord provide the tenant with a lump sum payment of this amount.

As the tenant was successful with this application, I also allow the tenant to recover the \$100.00 filing fee. I allow the tenant to implement a monetary award of \$100.00 for recovery of the filing fee by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$100.00, 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.

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 08, 2023

Residential Tenancy Branch