



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, FF, O

Introduction

This hearing dealt with the tenant's application for monetary compensation for damage or loss under the *Manufactured Home Park Tenancy Act* (the Act), regulations or tenancy agreement and recovery of the filing fee paid for this application. Both parties appeared at the hearing and were provided the opportunity to be heard and to respond to the other party's submissions.

Issues(s) to be Decided

1. Has the tenant established an entitlement to compensation from the landlord?
2. Award of the filing fee.

Background and Evidence

Upon consideration of all the evidence before me, including verbal testimony from both parties, I make the following findings. In 2001 the tenancy commenced. In January 2003 the landlord prepared a handwritten account of outstanding rent owed by the tenant for the years 2001 and 2002 totalling \$560.00. In April 2009 the tenant agreed to sell her manufactured home to another party. The landlord required the tenant to pay the outstanding rent from 2001 and 2002. The tenant sent the landlord a cheque for \$420.00 and a letter dated April 13, 2009. The letter stated, in part,

"Please find enclosed a cheque in the amount of \$420.00 which is 75% of the outstanding balance per your hand written reconciliation. My SINCERE apologies for the delay in getting this payment to you.

Kindly accept this cheque as payment in full of the balance outstanding and don't hesitate to call me during the day only at the number below if you need a copy of the sale agreement, etc. in order to effect this change."

I also heard consistent testimony from the parties with respect to the following facts. The tenant was responsible for paying rent for May 2009. The landlord and tenant had a telephone conversation upon receipt of the tenant's April 13, 2009 letter. The tenant provided the landlord with another cheque for \$420.00 on May 5, 2009. The landlord

cashed both cheques for \$420.00 on May 31, 2009 and the landlord refunded \$60.00 to the tenant June 2, 2009 after deducting \$560.00 in rental arrears and \$220.00 for rent for May 2009.

The parties provided different versions of the telephone conversation that took place after receipt of the tenant's April 13, 2009 letter and cheque.

The tenant stated that the landlord requested a replacement cheque as the original cheque provided to the landlord was payable to the name of the manufactured home park, not the landlord's business name. The tenant could not specifically recall receiving express consent from the landlord that \$420.00 would satisfy the outstanding rental arrears.

The landlord stated that the landlord requested future cheques be made out to the landlord's business name and did not communicate acceptance of \$420.00 in satisfaction of the \$560.00 rental arrears. The landlord explained that the tenant often paid portions of monies owed to the landlord and the landlord expected future payment of the balance owing. Finally, the landlord stated that she had conveyed the contents of the tenant's letter to the owner of the manufactured home park and that the owner had not been approached by the tenant about accepting a lesser amount for rent owed.

Upon enquiry, the tenant acknowledged that she may have owed rental arrears of \$560.00 and that by proposing a lesser amount she was trying to get a "deal". It was the tenant's position that the tenant's offer to pay \$420.00 for the outstanding rent was accepted by the landlord as indicated by the actions of depositing the cheque and not requesting further payment except for a replacement cheque.

The tenant's evidence also included a photocopy of another cheque written to the landlord in the amount of \$20.00 dated May 31, 2009; however, the back side of the cheque or a bank statement was not provided as evidence it was cashed by the landlord.

Analysis

Section 20 of the Act provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent. It is not in dispute that the tenant may have owed outstanding rent of \$560.00 and that the tenant failed to pay all rent payable under the tenancy agreement until the tenant was in the process of selling her manufactured home. Rather, at issue

is whether the tenant had the legal right to withhold a portion of the rent owed. A landlord may consent to accept a lesser amount of rent.

Implied consent differs from express consent, which is communicated by the spoken or written word. Implied consent is inferred from signs, actions, or facts, or by inaction or silence. I find insufficient evidence that the landlord gave express consent to accept a lesser amount for the amount owing. In determining whether the landlord implicitly gave the tenant consent to withhold \$140.00 of the rental arrears I have considered the disputed verbal testimony of the parties with respect to the telephone conversation that took place upon receiving the tenant's first cheque for \$420.00 and the written communication between the parties on April 13, 2009 and June 2, 2009.

The party who makes the claim has the burden to prove entitlement to the remedy being sought. Burden of prove is based on the balance of probabilities. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. I find the disputed verbal testimony insufficient to find the tenant has met the burden of proof and I find the tenant's letter of April 13, 2009 did not clearly communicate to the landlord that by cashing the tenant's cheque the landlord was agreeing to settle the matter of outstanding rent for a lesser amount.

In light of the above findings, I have determined that the tenant did not have the right to withhold rent from the landlord and the tenant has not established an entitlement to overpaid rent. Rather, I find the landlord's refund of \$60.00 to be accurate, as calculated below:

Outstanding rent from 2001 and 2002	\$ 560.00
Rent for May 2009	220.00
Less payments: April 13, 2009 cheque	(420.00)
May 5, 2009 cheque	<u>(420.00)</u>
Overpayment	\$ (60.00)
Less: refund from landlord June 2, 2009	<u>60.00</u>
Amount owed to tenant	<u>\$ 0.00</u>

I make no award for recovery of the filing fee and the tenant must bear the cost of making this application. The tenant's application is dismissed in its entirety.



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Conclusion

The tenant's application is dismissed and I make no monetary order for the tenant.

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: October 06, 2009.

Dispute Resolution Officer