



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, FF

Introduction

This matter dealt with an application by the Tenants to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 30, 2011, for compensation for damage or loss under the Act or tenancy agreement and to recover the filing fee for this proceeding.

Issue(s) to be Decided

1. Do the Landlords have grounds to end the tenancy?
2. Are the Tenants entitled to compensation and if so, how much?

Background and Evidence

This tenancy started in 1995. From 2007 until July 28, 2011, the Tenant, D.B., was employed by the Landlords as the park manager. The Tenants' rent at that time was \$376.00 per month. The Landlords claim that they instructed D.B. to give *all* tenants of the manufactured home park Notices of Rent Increase for 2008, 2009, 2010 and 2011. The Landlords claim that the D.B. assured them that he had served himself with Notices of Rent Increase but there is no evidence that he did so.

The Landlords' agent said it is common practice in manufactured home parks for the park managers to be paid at the end of each month for their services and to have their rent for the *preceding* month deducted from their pay. The Landlords' agent said the Landlords have records (which were not provided at the hearing) that show that for the first month of his employment, D.B. did not pay rent at the beginning of that month but rather it was deducted from his pay at the end of that month. The Landlord's agent claimed that for each month thereafter, D.B.'s rent for the preceding month was deducted from his pay at the end of that month. Consequently, the Landlord's agent said when D.B. received his final pay on or about July 28, 2011, rent of \$376.00 for July 2011 was deducted from his pay. The Landlords' agent said that on July 28, 2011, D.B. appeared (by nodding vaguely) to have agreed to pay an increased rent of \$400.00 per month.

On August 1, 2011, D.B. made a payment of \$376.00 to the Landlord's agent. The Landlord's agent said he was instructed by the Landlord, T.W., to return the payment

because it was not the correct amount. Consequently, on August 3, 2011, the Landlords' agent said he returned the Tenants' payment and gave D.B. a letter advising him that it was not the correct rent and that the Landlords wanted the Tenants to enter into a tenancy agreement. The Landlords' agent said he had some discussions with the Landlord and D.B. during the month of August 2011 to try to come to an agreement, however, nothing was resolved and as a result on August 30, 2011, he served the Tenant, D.B., in person with a 10 day Notice to End Tenancy for Unpaid Rent or Utilities. The Landlords' agent said the Tenants made a payment of \$376.00 on September 1, 2011 which he applied to rent for September 2011.

The Tenant, D.B., argued that the \$376.00 that was deducted from his pay at the end of July 2011 was for August 2011 rent. D.B. claimed that he only made a further payment of \$376.00 on August 1, 2011 because he had concerns the Landlords might try to evict him and he wanted to protect himself. D.B. admitted that the Landlords' agent returned this payment to him on August 3, 2011 and that he received the 10 Day Notice on August 30, 2011. D.B. claimed that he did not make another rent payment for August 2011 after receiving the 10 Day Notice because he wanted to see what would come of the dispute resolution proceedings first.

Analysis

I find on a balance of probabilities that the Tenants' rent for July 2011 was deducted from D.B.'s pay at the end of July 2011 as alleged by the Landlords' agent. Where the evidence of the D.B. and the Landlords differed on this point, I prefer the evidence of the Landlords as I found D.B.'s evidence was contradictory on material matters. For example, D.B. claimed that although he believed he had already paid rent for August 2011 on July 28, 2011, he made a further payment on August 1, 2011 because he wanted to protect himself from being evicted for non-payment of rent. However, D.B. later claimed that after his August 1, 2011 payment was returned to him and he received a 10 Day Notice for Unpaid Rent, he simply decided not to do anything. I find that this statement contradicts his earlier statement that he was concerned enough about being evicted on August 1, 2011 that he made a payment, yet after being served with a Notice, did not feel he needed to do so.

The Landlords argued that they should be entitled to increase the Tenants' rent in an amount to account for the number of years it was not increased because the Tenant misled them about giving himself notices of rent increase. However, there is no authority under the Act to do this; the Landlords are not entitled to increase the Tenants' rent unless they enter into a new written agreement with the Tenants, comply with the provisions of the Act by either serving the Tenants with a Notice of Rent Increase in the approved form (for the current year only) or apply for dispute resolution for an additional rent increase. Furthermore, the Landlords' agent admitted that it was the Landlords who deducted the Tenants' rent from his pay each month for the past 4 years. In the circumstances, I find it unusual that the Landlords would not have noticed that the

Tenants' rent remained the same for that period of time. In any event, until such time as the Landlords take one of the steps set out above, the Tenants' rent is and will remain at \$376.00 per month.

I find that D.B. made a rent payment of \$376.00 for August 2011 on August 1, 2011 which was returned to him by the Landlords on August 3, 2011. I find that D.B. was served with a 10 Day Notice to End Tenancy on August 30, 2011 which was cancelled by his payment of \$376.00 on September 1, 2011. Although the Landlords claim that the payment was accepted as rent for September, at common law, payments are always applied to arrears first. As a result, I find that the 10 Day Notice to End Tenancy for Unpaid Rent dated August 30, 2011 was cancelled by the Tenants' payment of \$376.00 on September 2011. As a further consequence, I also find that rent for September 2011 in the amount of \$376.00 has not been paid.

D.B. said he was also seeking \$120.00 for his time and gas expenses to prepare for and file his application for dispute resolution in this matter. However the Act does not make any provision for a party to recover their costs of preparing for and attending dispute resolution proceedings. Consequently, this part of the Tenants' application is dismissed without leave to reapply. Given the unreasonable conduct of D.B. in this matter (eg. by withholding rent when he knew or should have known he was not entitled to do so), I find that this is not an appropriate case to reimburse the Tenants the cost of the filing fee for this proceeding and that part of their application is also dismissed without leave to reapply.

Conclusion

The Tenants' application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 30, 2011 is granted. The Tenants' application for compensation and to recover the filing fee for this proceeding is dismissed without leave to reapply. 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 29, 2011.

Residential Tenancy Branch