Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, CNR

Introduction

This matter dealt with an application by the Tenants, T.F. and K.F. and an application by the Tenant, S.W., to dispute a rent increase and to cancel 10 Day Notices to End Tenancy for Unpaid Rent or Utilities dated March 12, 2012. At the beginning of the hearing the Parties agreed to have the two applications heard at the same time.

Issue(s) to be Decided

1. Does the Landlord have grounds to end these tenancies?
2. Is a rent increase that took effect February 1, 2012 a valid rent increase?

Background and Evidence

The manufactured homes on sites #6 and #32 are owned by the Tenant, T.F. Site #6 is occupied by T.F. and his spouse, K.F. and site #32 is occupied by T.F.'s son, S.W. The Tenant, T.F., claimed that he used to reside in site #32 with his son but subsequently purchased the manufactured home on site #6 and moved into that mobile home and S.W. remained in the mobile home on site #32. The Tenants claim that S.W. has resided in the mobile home on site #32 for approximately 5 years. The Landlord's agent said she is unsure how long S.W. has resided in the mobile home on site #32 because she only took over managing the park 2 years ago. The Landlord's agent argued that T.F. never obtained the previous or current Landlord's consent to sublet site #32 (which the Tenants deny).

In previous proceedings regarding these manufactured home sites, the Tenant, T.F., and the former Landlord agreed that as of November 1, 2008, rent for site #32 would be $275.00 per month and rent for site #6 would be $320.00 per month and that any future rent increases would be subject to the Act. On or about October 20, 2011, the Landlord's agent delivered a letter to each Tenant of the manufactured home park proposing a rent increase of $40.00 per month which would take effect on February 1, 2012. The Landlord's agent asked each Tenant to indicate on the letter whether they agreed or disagreed with the proposed increase. Attached to that letter was an incomplete Notice of Rent Increase Form that is also unsigned and undated.

The Tenants did not return a copy of the letter dated October 20, 2011 to the Landlord and as a result, on February 27, 2012, the Landlord's agent sent the Tenants a letter proposing that they either pay the $40.00 rent increase or alternatively, the Landlord would charge the Tenants the actual proportional amount and require the Tenants to pay for their own water. The Landlord's agent said on March 13, 2012, she served the Tenant, T.F., with two 10 Day Notices to End Tenancy for Unpaid Rent or Utilities dated March 12, 2012 (for site #6 and site #32) by posting them to T.F.'s door as well as an amended, complete Notice of Rent Increase which was still unsigned and undated. The Notices to End Tenancy allege that the Tenants have rent arrears of $80.00 representing a $40.00 shortfall for February and March 2012.

The Tenants argued that the Landlord's Notice of Rent Increase was invalid because it was incomplete and claimed that no information was provided to them to substantiate the amount sought for the proportional amount of the increase. The Landlord's agent argued that the Tenants were not entitled to the park's private, financial records.

Analysis

I find that the decision made on November 4, 2008 addressed the fact that there would be future increases as follows:

> *"The Parties agree that rent for unit 32 is $275.00 per month and that all rent increases are subject to the provisions of the Act; The Parties agree that rent for unit 6 is $320.00 per month effective November 1, 2008 for a period of 12 months and that rent increases will be subject to the Act*..."

Consequently, I find that the Landlord is entitled to increase the rent provided that it is done in accordance with sections 35 and 36 of the Act. Section 35(2) and (3) require the Landlord to give a tenant a notice of rent increase ***in the approved form*** at least three months before the effective date of the increase. Section 36 of the Act says the amount of the increase must be calculated in accordance with the Regulations to the Act. For the year 2012, the permissible increase is 4.3% + a proportional amount. I find that the Notice of Rent Increase served on the Tenants in October 2011 was not in the approved form because it was missing two pages of calculations and was unsigned and undated. I also find that the amended Notice of Rent Increase served on the Tenants in February 2012 is not in the approved form because it also is unsigned and undated.

The Tenants also argued that the Landlord refused to provide them with copies of bills to substantiate the amounts used to calculate the proportional amount. The Landlord's agent argued that she was not required to disclose this information to the Tenants. However, if the amount of a Notice of Rent Increase is disputed by a Tenant, then the onus is on the Landlord to prove that the amount sought is correct by providing sufficient evidence of the increased expenses in question not only to the Residential Tenancy Branch but also to the affected Tenants. A list setting out the alleged expenses is not sufficient.

In any event, as I have found that there is not a valid Notice of Rent Increase, I also find that there are no rent arrears for February and March 2012 and accordingly, the 10 Day Notices to End Tenancy for Unpaid Rent or Utilities dated March 12, 2012 are cancelled.

I note for clarification, that the Tenants, T.F. and K.F., were deemed under s. 82 of the Act to have received the 10 Day Notice three days after it was posted or on March 16, 2012. Section 39(4) of the Act says a tenant has 5 days from the day they receive a 10 Day Notice to either pay the alleged rent arrears or apply for dispute resolution and if they fail to do so, they are deemed pursuant to s. 39(5) of the Act to have accepted that the tenancy will end on the effective date of the Notice. Consequently, ***the Tenants, T.F. and K.F. had until no later than March 21, 2012 to apply for dispute resolution to cancel the notice.*** The Tenant, T.F., said he filed his application on March 19, 2012 and the hearing packages are dated March 19, 2012 however the Tenants' application is dated stamped March 23, 2012. Given that the 10 Day Notice was invalid (because no rent was owed when it was issued), I find that it is irrelevant whether the Tenants filed their application on March 19 or 23, 2012.

As a final matter, the Landlord argued that S.W. did not have a tenancy agreement with the Landlord and that the Tenant, T.F., had not obtained the Landlord's consent to sublet the site to S.W. Consequently, the Landlord's agent argued that S.W. did not have standing to apply to bring his application in this matter. However, according to all parties, S.W. has resided on site #32 for at least two years with the knowledge of the current Landlord's agent and she provided any evidence to conclude that S.W. is not a Tenant. Furthermore, I am satisfied for the purposes of these proceedings that even if S.W. is not a Tenant (and I make no finding whether he is or not) I find that S.W. was authorized by T.F. to act as his agent and bring this application on T.F.'s behalf.

Conclusion

The Tenants' application is granted. The 10 Day Notices to End Tenancy for Unpaid Rent or Utilities dated March 12, 2012 are cancelled and the undated Notice of Rent Increase served on October 20, 2012 as well as the amended one served in February 2012 are of no force and effect. Rent will remain at its present rate until such time as the Tenants either agree in writing to a new rate of rent or are served by the Landlord with a new Notice of Rent Increase that complies with the Act.

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: April 11, 2012.

Dispute Resolution Officer