



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, FF

Introduction

This hearing convened as a result of Tenant's Application for Dispute Resolution wherein the Tenant requested an Order canceling a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities issued June 2, 2017 (the "Notice"), more time to make such an application, an Order that the Landlord comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation* and or the tenancy agreement and to recover the filing fee.

The hearing was conducted by teleconference on August 2, 2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Tenant's Claims

As the Tenant applied for dispute resolution within five days of receipt of the Notice, she does not require more time pursuant to section 66(1) of the *Act*.

Issues to be Decided

1. Should the Notice be cancelled?
2. Should the Landlord be ordered to comply with the *Act* in terms of the rent increase issued?
3. Should the Tenant recover the filing fee paid?

Background and Evidence

Residential Tenancy Branch Rules of Procedure provide that when a Tenant applies to cancel a Notice to End Tenancy the Landlord presents their evidence first as it is the Landlord's obligation to prove the reasons for ending the tenancy.

The Landlord testified as follows. He stated that the tenancy began August 1, 2006. A copy of the Manufactured Home Pad (Site) Tenancy Agreement (the "Tenancy Agreement") was provided in evidence. The Tenancy Agreement provided that rent was payable in the amount of \$275.00.

The Landlord testified that he obtained the Tenant's consent to a rent increase to \$360.00, from \$288.10. He stated that the Tenant signed the written agreement in December of 2016 (a copy of the document was provided in evidence).

The document included the following: "If one person will does not sign, then the offer is not available anymore and I will be forced to go through the arbitration and apply for over \$400 per month." The Landlord further testified that he believed he required unanimous consent of all tenants and was later informed that he required only 80% of the park tenants to agree to the increase.

The Landlord testified that he then issued a Notice of Rent Increase on January 1, 2017 which included the following:

The current rent is: \$288.10

The rent increase will be: \$71.90 (including 3.7% = \$10.66 allowable increase and
21.26% = \$61.24 "agreed to increase")

The new rent will be: \$360.00

He further testified that despite her agreement, the Tenant failed to pay the agreed upon amount.

He also stated that five to six people did not agree with the rent increase and he therefore brought an application before the branch for an additional rent increase. He stated that he needed other details and was unsuccessful in his application.

A copy of the April 2017 Decision of Arbitrator Reid was provided in evidence before me.

The Landlord stated that the Tenant paid the additional amount for the first "couple months", including \$360.00 for April 2017, \$360.00 for May 2017 and then she paid only \$276.25 for June 2017 which he described as her "original rent". He clarified that at some point in time her rent increased by \$1.25 from \$275.00, although he could not say when. (Notably, the Tenant did not dispute that her rent was \$276.25.)

The Landlord then issued a 10 Day Notice to End Tenancy on June 2, 2017 alleging that \$251.25 was owing as of June 1, 2017. When I informed him that the difference between the June payment of \$276.25 and the amount he requested of \$360.00 was only \$83.75, not \$251.21 as noted on the Notice, he could not explain the discrepancy.

In response to the Landlord's submissions, the Tenant testified as follows:

She confirmed that she paid \$360.00 for April 2017; \$360.00 for May 2017; and \$276.25 for June 2017.

The Tenant stated that she felt bullied to sign the agreement as the Landlord stated that if she didn't agree he would seek a rent increase over and above \$400.00.

The Tenant further stated that she understood that if he did not have 100% agreement from the other tenants to the additional rent increase that his offer would be withdrawn. To this end she drew my attention to the wording of the document he drafted for her signature. She also stated that she believed that the Landlord required 100% agreement from all of the tenants failing which he would have to go to Arbitration to obtain the additional rent increase.

The Tenant stated that she was aware he went to Arbitration and was not successful at which time she discontinued paying the increased rent as he did not have the required 100%.

The Tenant also stated that she never paid \$288.10 (the amount indicated on the Notice of Rent Increase) and as such she went back to paying the \$276.25 which was her monthly rent amount.

The Tenant stated that she did not receive a Notice of Rent Increase as alleged by the Landlord.

The Tenant further stated the only time she heard the Landlord's name was in December of 2016 when he called her and began yelling at her and told her that she needed to come to the corporate office and sign a document. She stated that he threatened to take her to Arbitration and obtain over \$400.00 per month. She stated that by the time she went down there it was late February 2017 not December 2016 as he alleged. She further stated that she did not obtain any legal advice with respect to the agreement.

The Tenant stated that she was informed that the additional rent increase application before Arbitrator Reid was unsuccessful when one of the tenants who disputed the rent increase received a copy of her Decision. The Tenant stated that when she read this Decision she believed that the rent increase she received was not valid.

The Tenant introduced form letters in evidence wherein the tenants write that they felt pressured into signing the agreement.

In reply to the Tenant's testimony, the Landlord stated that he drafted a Notice of Rent Increase initially on January 6, 2017, but then changed the date to February 1, 2017 as he was not able to give her three clear months' notice. The Landlord stated that the Tenant came to his office to sign the agreement and at that time he handed the Tenant the Notice of Rent Increase dated February 1, 2017.

In response the Landlord stated that there were "just a couple people in the park are banding together making up untruths". He also noted that he provided letters in evidence from some of the other renters who confirmed that he was not bullying them in any way.

Analysis

After careful consideration of the evidence before me, the testimony of the parties and on a balance of probabilities I find as follows.

The Landlord was not able to provide me with consistent and clear testimony with respect to the amount of rent owing as of the date the Notice was issued. As noted previously in this my decision, the amount claimed on the Notice does not coincide with the Landlord's testimony as to the amount owing for rent, even if the rent increase was found to be valid. As such, I find he has failed to prove the Notice. **Accordingly, the Notice is cancelled. The tenancy shall continue until ended in accordance with the Act.**

I also find the Landlord has failed to prove the Tenant agreed to the rent increase.

I find the document, purporting to evidence the Tenant's agreement to the rent increase to be ambiguous. The document suggests that in the event one person does not agree to the increase the offer would be rescinded. The arbitration before Arbitrator Reid clearly indicates some of the park renters were not in agreement.

I accept the Tenant's testimony that she believed that if the Landlord could not obtain agreement from *all* of the park renters that his offer would be withdrawn.

The Landlord disagrees with this interpretation. However, pursuant to the principle of *Contra Proferentem* any ambiguity should be interpreted in favour of the Tenant. The Landlord drafted the document for the Tenant's signature. *Contra Proferentem* is a legal principle which provides that where there is ambiguity in an agreement, the interpretation should be in favour of the person who did not draft the document.

I therefore find the Tenant did not agree to the increased rent.

I further accept the Tenant's evidence that she did not receive the Notice of Rent Increase. Where her evidence conflicts with the Landlord, I prefer hers. I found her responses to be forthright and compelling. Conversely, I found the Landlord's responses to be evasive.

In all the circumstances, I find the Notice of Rent Increase to be invalid. **The rent will continue at \$276.25 until raised in accordance with the Act.**

The Tenant shall be credited with any payment in excess of the \$276.25 monthly rent payment. For greater clarity, I find the Tenant is entitled to recover the \$83.75 paid for April 2017 and the \$83.75 paid for May 2017 for a total of \$167.50.

Having been substantially successful, the Tenant is entitled to recover her filing fee. I therefore authorize her to reduce her next month's rent by \$100.00 representing recovery of this amount.

In total the Tenant is entitled to reduce her next month's rent by \$267.50 such that her next payment shall be \$8.75.

Conclusion

The Landlord was unable to prove the Notice and it is therefore cancelled. The tenancy shall continue until ended in accordance with the *Act*.

The Notice of Rent Increase is invalid. The Tenant shall be entitled to recover the \$167.50 paid for April and May 2017 in excess of her \$276.25 monthly rent amount in addition to the \$100.00 filing fee for a total of \$267.50. She is authorized to reduce her next month's rent by this amount such that she will pay \$8.75 for September 2017 following which she will pay \$276.25 until her rent is increased in accordance 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: August 3, 2017

Residential Tenancy Branch