



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR

Introduction

The tenant applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to section 39 of the *Manufactured Home Park Tenancy Act* (the “Act”).

Preliminary Issue – Amendment to the landlord’s name

The landlord corrected the landlord’s name. Pursuant to section 57 of the Act, I amend the application to correct the name of the landlord.

Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?

Background and Evidence

In reaching this decision, I have considered all relevant evidence that complied with the *Rules of Procedure*. Only the necessary oral and documentary evidence that helped resolve the issues of the dispute and explain the decision is included below.

The tenancy began May 1, 2019. Rent is \$750.00 due on the first day of the month.

The landlord served the Notice on March 16, 2023 by attaching a copy to the door of the site. Page two of the Notice indicates that the tenant did not pay rent in the amount of \$2,150.00 that was due on March 1, 2023. All pages of the Notice were served and submitted into evidence.

The landlord affirmed that:

- the tenant currently has \$3,650.00 in rental arrears relating to unpaid rent from March and April 2023.
- March 2023's rental arrears is \$2,150.00. This figure is much higher than the agreed monthly rent of \$750.00 because the tenant is occupying two additional sites in addition to the tenant's site. Therefore, the landlord is charging the tenant for rent for all three sites, leading to the figure of \$2,150.00.
- April 2023's rental arrears is \$1,500.00. This figure is much higher than the agreed monthly rent of \$750.00 because the tenant is occupying one additional site in addition to the tenant's site. Therefore, the landlord is charging the tenant for rent for both sites, leading to the figure of \$1,500.00.

The tenant affirmed that:

- the tenant attempted to pay the agreed upon monthly rent of \$750.00 to the landlord in person on March 15, 2023 (one day before the Notice was served on the tenant).
- The landlord, however, rejected the payment. The tenant provided video evidence of the landlord rejecting payment.

Analysis

Section 36 of the Act states that a landlord may only impose a rent increase up to the amount calculated in accordance with the *Manufactured Home Park Tenancy Regulation* (the "Regulation"). Section 32.1 of the Regulation provides that, in relation to a rent increase with an effective date on or after January 1, 2023 and before January 1, 2024, a landlord may impose a rent increase that is no greater than 2% plus the proportional amount. The proportional amount is defined under the Regulation as the sum of the change in local government levies and the change in utility fees divided by the number of manufactured home sites in the landlord's manufactured home park.

The landlord's evidence is that the rent increase that was imposed on the tenant was due to the tenant occupying additional sites rather than due to changes in local government levies and utility fees. Therefore, the maximum rent increase that could be imposed by the landlord is 2% of \$750.00, which is \$15.00. Since the increase in rent is significantly higher than \$15.00, I am disallowing this increase and find that the monthly rent payable is \$750.00.

Section 20 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some of the rent. Section 39 of the Act allows landlords to end a tenancy if

the tenant does not pay rent on time by issuing a *10 Day Notice to End Tenancy for Unpaid Rent*.

A tenant who receives a *10 Day Notice to End Tenancy for Unpaid Rent* has five days after the receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution.

The tenant's evidence shows that the tenant attempted to pay the agreed upon monthly rent of \$750.00 to the landlord in person on March 15, 2023 (one day before the Notice was served on the tenant). The landlord, however, rejected the payment. Since the tenant had attempted to pay rent on the day before the Notice was served on the tenant, the Notice would have been invalid had the landlord accepted payment as there would be no rental arrears. Therefore, I am cancelling the Notice.

Conclusion

The tenant's application is granted and the tenancy shall continue until it is ended 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: April 24, 2023

Residential Tenancy Branch