



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: MDNC, RPP

Introduction

This application was brought by the tenant \$23,117.25 in compensation for the loss of a manufactured home, contents and other belongings, and/or return of personal property after the landlord disposed of it following the end of the tenancy.

As the tenancy has long ended, as authorized by section 53(3)(c) of the Act, I have amended the tenant's application to delete requests to cancel a notice to end the tenancy, provide the tenant with an order of possession and allow access to the site for the tenant and his guests.

Issue(s) to be Decided

This application requires a decision on whether the tenant is entitled to monetary compensation for loss of his manufactured home and various goods, and an order for return of personal property.

Background and Evidence

The manufactured home site that is the subject of this dispute was located in a 500 acre property primarily used as a gravel pit.

The tenancy began in May of 2005 under an arrangement by which the tenant was provided with the (marginally) serviced site, rent free, in exchange for security services. That arrangement failed resulting in the landlord terminating the arrangement informally in August 2005 and formally letter of November 22, 2005, followed by a Notice to End Tenancy dated November 30, 2005. That notice was the subject of a hearing conducted on December 16, 2005 on the tenant's application under File No. 176084 to extend the end of tenancy date.

By decision of January 12, 2006, the Arbitrator allowed the extension and issued the landlord with an Order of Possession to take effect on May 31, 2006. Matters were confused by the fact that all parties at the present hearing stated that none of them received a copy of the decision until June of 2006, after the tenancy was supposed to have ended. While branch computer records show that the decision was entered on January 12, 2006, and even though the *Act* requires that decisions be rendered in 30 days, the delayed receipt and lack of follow-up on the part of the parties to the dispute may be explained by changes in counsel in the interim. In any event, having attended the hearing, I believe it fair to assume that the parties knew an Order of Possession for the landlord was quite possible if not certainly imminent and had the five month period to at least make preliminary preparation for that contingency.

As a matter of note, the tenancy had also been the subject of a hearing on October 7, 2005 on the tenant's application under File No. 173330. The landlord was not represented at that hearing and the Arbitrator ordered that the landlord provide the tenant with a key to the front gate and power to the site.

That hearing apparently followed the informal notice given by the property manager in early August of 2005.

During the present hearing, the tenant gave evidence that he had been in the process of moving out on July 4, 2006 when, in a dispute at the front gate, the property manager told him that he was barred from the property. He was given a three or four day window to vacate in September.

The tenant also gave evidence that the lock to the property had been changed and he could no longer access it to continue removing his property.

Both the property manager and the principal of the corporate landlord stated that they had not barred the tenant on that or any other occasion and that the lock for which the tenant had a key remains unchanged to this day.

In any event, the tenant stated that he did not return to the property until September of 2007, having been assisted in negotiating access by his legal counsel, only to find that his manufactured home and its contents were gone.

The tenant then made application for dispute resolution for the same claims as in the present application. However, he failed to appear, and in a decision dated November 5, 2007 under File No. 700419, the application was dismissed with liberty to reapply. The tenant made the present application on February 20, 2008, which, with a series of consensual adjournments, was eventually heard on January 6, 2009.

During the hearing, the tenant gave evidence that he had purchased the manufactured home used but that he had done a number of improvements including the installation of hardwood flooring and thermo-pane windows. He said he believed the manufactured home had been built in 1989. However, I accept the evidence of counsel for the landlord that he had searched the unit on the Manufactured Home Registry and that it had, in fact, been built in 1969.

The landlord presented a series of photographs showing the manufactured home during its dismantling in the fall of 2006. The photos also showed a number of materials left behind by the tenant including a truck canopy, barrels, tires, old batteries, etc.

By that time, the site had experienced a sand slide and some of the items were buried.

However, the photos do show the exterior of the unit after much of the metal siding had been removed and exposed extensive mold and mildew on the wood siding. While it was suggested by counsel for the tenant that the siding and windows had been set aside for profitable salvage, two of the landlord's witnesses testified that the disposal company that took it away said the salvage value was less than the cost of removal.

One witness who does contract work which has him on the site most work days except for winter and who assisted with the demolition, stated that he had been in negotiation with the tenant to take over the home with a view to moving it his own property. While communicating with the tenant, he said that the tenant had told him he would not be returning to the home.

Although the tenant contests the point, the contractor said he was under the impression that the tenant would relinquish the home to him for the cost of relocating it. He said that on that assumption, he had enquired of a company which moves such units and had been told that they would not attempt to move a unit of that age and condition. He subsequently, examined the interior and found that he could see ground between the wall and the floor, and that the unit was rodent infested in the extreme, and that there was little of anything of any apparent value. On that inspection, he determined that the home had no value and decided not to take possession of it even at zero charge.

Similar evidence was given by the property manager who said he opened the door and was so repulsed by the filth and rodent infestation that he would not enter.

Both parties stated that, given the condition of the manufactured home, the most appropriate disposition of it would be to burn it on site as was done.

The tenant had requested some of his belongings which the contractor proceeded to provide at his own expense, about \$165 for shipping by Greyhound and the cost of six large plastic containers. He stated that he wished to keep his promise to the tenant even though he no longer wished to take ownership of the manufactured home.

The tenant submitted a lengthy list of goods said to have been in the home when he left it but there is no corroborating evidence as to its existence or value.

The landlord did concede that a 1,500 gallon septic tank may have been purchased by the tenant. The tenant also claimed some length of water line.

Analysis

Counsel for the landlord holds that the present circumstances constitute abandonment and that the landlord was within his rights to dispose of the goods in question

I concur that, under the circumstances and passage of time, and the message relayed by the contractor, it was reasonable for the landlord to conclude that the tenant would not be returning, and to conclude that the total value of the home and contents was less than \$500 under *Regulation* 35(2)(b).

In so concluding, I take into account the fact that the landlord did not hear from the tenant in about one year after he left. In addition, I accept the evidence of rodent infestation so storage would be unsanitary, and the cost of commercial disposition would exceed the value of the goods.

I appreciate that the goods were of some value to the tenant and if I had considered a monetary award to the tenant, I believe it would be for an amount less than the landlord's costs as the tenant would have to have paid under *Regulation 36(1)(b)* to recover them.

The tenant had paid no rent from November of 2005 after his employment, which included pad rent, had terminated. While I concur that the landlord's estimate of rent at \$1,000 per month is grossly unrealistic, reasonable occupancy and storage costs would probably be in the order \$200 per month for at least seven or eight months and probably more. The landlord was left with the cost of site clean up and demolition.

While the contractor makes no claim on it, the tenant also benefited from his voluntary purchase of containers and shipping of the tenants goods at out-of-pocket expense to the contractor.

Therefore, the tenant's application for a Monetary Order is dismissed without leave to reapply.

As to the septic tank, the landlord agreed that the tenant will be allowed to remove it and that he would have it pumped before it is picked up. (The tenant gave evidence that he had pumped out the previous septic tank when he moved to the property.)

Therefore, I hereby order that the tenant must remove the septic tank on or before May 15, 2009. The tenant must give the landlord two weeks notice and arrive at a mutually agreeable time. The landlord must have the tank pumped out and empty if and when the tenant picks it up.

If the tenant does not remove the septic tank by May 15, 2009, it is abandoned and the landlord is at liberty to dispose of it as he sees fit.

I make no finding on the water line which may have been buried in the sand slide or damaged during the cleanup.

January 7, 2009

Dispute Resolution Officer