

## DECISION

Dispute Codes      MNDC OLC FF

### Introduction

This hearing dealt with joint Applications for Dispute Resolution by three separate Tenants to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to obtain an Order to have the Landlord comply with the Act, and to recover the cost of the filing fees from the Landlord for the cost of the joined applications.

Service of the hearing documents, by the Tenants to the Landlord, was completed in accordance with section 52 of the Act, served personally by the Lead Applicant to the Landlord's office on December 18, 2009, at 11:00 a.m.

The Landlord, Landlord's Counsel, the Lead Applicant and a Tenant, appeared, acknowledged receipt of evidence submitted by the other, were provided the opportunity to present their evidence orally, in writing, and in documentary form. The Landlord, Lead Applicant, and the Tenant provided affirmed testimony.

### Issues(s) to be Decided

Are the Tenants entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, pursuant to section 60 of the *Manufactured Home Park Tenancy Act*?

Are the Tenants entitled to an Order to have the Landlord comply with the Act pursuant to section 55 of the *Manufactured Home Park Tenancy Act*?

### Background and Evidence

The Lead Applicant testified that each applicant is seeking \$509.53 for recovery of overcharged amounts for water and sewer services provided by the Landlord for the years 2005, 2006, 2007, and 2008. The Lead Applicant made reference of his documentary evidence which included, among other documents, an accounting of the amount claimed, letters written to the Landlord requesting documentation for the basis of the Landlord's determination for common costs, sections of the Tenants' lease, and supporting amounts charged to the Landlord by the City for water and sewer services.

The Landlord testified that he was in agreement with the amounts claimed by each applicant and that the amounts claimed were calculated in agreement between the Landlord's office and the Tenants.

The Landlord's Counsel argued the Tenants' applications are restricted by the Statute of Limitations Act which limits the Tenants' claims to a period covering the last six years.

### Analysis

All of the testimony and documentary evidence was carefully considered.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

The evidence supports the amount claimed of \$509.53 is an overcharge for water and sewer services charged by the Landlord for the period beginning 2005 through to the end of 2008, in contravention of the tenancy agreement. Based on the aforementioned I find the Tenants have proven the test for damage or loss, as listed above, and I approve their claim of \$509.53 pursuant to section 60 of the *Manufactured Home Park Tenancy Act*.

I do not accept Counsel's argument that the Tenants' applications are restricted by the Statute of Limitations Act and a six year time frame. Section 53 of the *Manufactured Home Park Tenancy Act* provides as follows:

### **Latest time application for dispute resolution can be made**

- 53** (1) If this Act does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned.
- (2) Despite the *Limitation Act*, if an application for dispute resolution is not made within the 2 year period, a claim arising under this Act or the tenancy agreement in relation to the tenancy ceases to exist for all purposes except as provided in subsection (3).
- (3) If an application for dispute resolution is made by a landlord or tenant within the applicable limitation period under this Act, the other party to the dispute may make an application for dispute resolution in respect of a different dispute between the same parties after the applicable limitation period but before the dispute resolution proceeding in respect of the first application is concluded.

In accordance with section 55(3) of the *Manufactured Home Park Tenancy Act*, I approve the Tenants' request for an Order to have the Landlord comply with the Act.

As the Tenants have been successful with their claims I hereby award them recovery of the filing fees.

Conclusion

I HEREBY ORDER the Landlord to comply with the *Manufactured Home Park Tenancy Act*.

I HEREBY AWARD the Lead Applicants the sum of \$559.53 (\$509.53 + \$50.00 filing fee) and authorize the Lead Applicants to deduct this one time amount from their future rent payable.

I HEREBY AWARD Tenant 1 the sum of \$534.53 (\$509.53 + \$25.00 joining fee) and authorize Tenant 1 to deduct this one time amount from their future rent payable.

I HEREBY AWARD Tenant 2 the sum of \$534.53 (\$509.53 + \$25.00 joining fee) and authorize Tenant 1 to deduct this one time amount from their future rent payable.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 08, 2010.

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Dispute Resolution Officer