



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNDC, OLC, RPP, LRE, FF

Introduction

This Application for Dispute Resolution by the tenant was seeking a monetary order for compensation in the amount of \$4,400.00, an order to force the landlord to comply with the Act, an order to force the landlord to return the tenant's property, an order to suspend or set limits on the landlord's right to enter the unit and allow access to (or from) the unit or site for the tenant or the tenant's guests.

Despite being served by registered mail sent on June 28, 2010, the respondent landlord did not appear. The applicant tenant appeared and gave testimony.

At the outset of the hearing, the tenant advised that the tenant had since moved out of the manufactured home park on August 6, 2010. Therefore the tenant's request for an order to suspend or limit the landlord's access to the unit is no longer at issue as the tenancy has ended.

Issue(s) to be Decided

The remaining issues to be determined based on testimony and evidence are:

- Whether the tenant is entitled to compensation from the landlord
- Whether the landlord should be ordered to comply with the Act
- Whether the landlord should be ordered to return the tenant's property

Burden of Proof: The burden of proof is on the tenant to establish that the landlord has taken the tenant's property in violation of the Act and should be ordered to pay.

Background and Evidence

The tenant testified that the tenancy began on July 1, 2004 and the tenant sold the manufactured home and vacated on August 6, 2010. The landlord testified that during the tenancy, the tenant had purchased pressure treated lumber and cedar fencing and had a contractor erect a deck and some cedar fence panels and the landlord had advised the tenant that the deck area was not in compliance as it was over size and should be dissembled and reduced. The landlord testified on April 20, 2010, while the tenant was away from the site, the landlord came onto the property without notice and removed a portion of the tenant's deck and three cedar fence panels. The landlord also took some contractor equipment and tools that were at the site. The tenant testified that none of the tenant's possessions taken by the landlord were returned despite the tenant's requests that the landlord relinquish these items.

The tenant stated that this included 50 ten-foot pressure-treated two-by-six planks, 3 cedar fence panels, 12 joist-hangers as well as a ladder and a saw and hand-tools belonging to the contractor. The tenant was seeking compensation of \$4,400.00.

Analysis:

I find that it is not necessary to determine whether or not the deck was over-size as this issue is not relevant to the application before me, which pertains to the allegation that the landlord confiscated and retained the tenant's property and failed to compensate the tenant for the value.

I therefore find that this matter has nothing to do with the use and occupation of the land, but is a monetary claim for damages and loss.

In regards to an Applicant's right to claim damages from another party, Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 60 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find that in order to justify payment of damages under section 60 of the Manufactured Home Park Tenancy Act, the Applicant would be required to prove that the other party did not comply with the Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7. It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the claimant, that being the tenant, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence to verify the actual monetary amount of the loss or damage.

There is no doubt that the landlord's actions in failing to return the lumber and tools after their removal by the landlord contravened the Act. I find that there is nothing in the Manufactured Home Park Tenancy Act that would give the landlord authority to confiscate and keep any property of the tenant. In this regard, I find

that the tenant has met element 2 of the test for damages. However, the tenant did not provide the receipts verifying the value of the material taken.

Notwithstanding the above, I find that the tenant is entitled to the immediate return of any and all of the tenant's possessions removed by the landlord including:

- 50 2-by-6 pressure-treated planks each ten-feet long
- 3 4-foot by 8-foot cedar fence panels
- 12 joist hangers
- One ladder
- A power saw and other miscellaneous tools

Should the landlord fail to return the above items as ordered, I find that the tenant is entitled to reasonable compensation to be negotiated between the parties and based on the fair and properly verified value of the items in question.

Conclusion

I hereby order that the landlord return the tenant's property as listed above forthwith.

August, 2010

Date of Decision

Dispute Resolution Officer