



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNDC, O, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution for a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent and both tenants.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for compensation for damage to the site and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to sections 30, 37, 38, 60, and 65 of the *Manufactured Home Park Tenancy Act (Act)*.

Background and Evidence

In a previous Dispute Resolution hearing on March 12, 2010 the parties agreed to the following terms that would lead to the end of the tenancy.

1. The tenant agreed to move out on or before 1:00 p.m. on May 31, 2010.
2. The landlord agreed to allow the tenancy to continue till May 31, 2010. An order of possession will be granted to the landlord.
3. The tenant agreed to draft a letter retracting the allegations made in the letter that he distributed on December 20, 2009. This draft will also contain an apology. The advocate for the tenants will coordinate the approval of this letter with the manager of the Park. The tenant agreed to have the approved letter ready for distribution by noon on Friday March 19, 2010.
4. The tenant agreed to have this approved letter distributed to all occupants of the Park by noon on Monday March 22, 2010.
5. The parties agree that the above particulars comprise **full and final settlement** of all aspects of the dispute for both parties.

6. The parties agree to exercise any additional goodwill and spirit of cooperation necessary in regard to the above undertakings, which might be required to achieve a positive end to this landlord – tenant relationship.

The tenants provided testimony that they took this to mean that they could vacate the site at any time, without notice to the landlord, prior to 1:00 p.m. May 31, 2010. They further stated that they determined they could leave 3 or 4 days after the March 12, 2010 hearing and set forth to do so.

The tenants stated that they made this decision because they felt harassed by the landlords and that they had been victim to the landlords' fraud and forgery and they needed to leave as soon as possible. The tenants did not dispute the landlord's testimony that they moved out on March 29, 2010 and March 30, 2010.

The landlord testified that the tenants provided no notice that they were leaving prior to May 31, 2010 at any point and that when they left the condition of the site was as portrayed in the photographs submitted. The tenants did not dispute the condition of the site based on the photographs, they did dispute that they held any responsibility in paying for either the rent or the repairs.

Analysis

While the tenants suggest that they had to leave the site as soon as possible because of the landlords' continued fraud, forgery and harassment they have failed to provide any evidence to support these claims. I note that the tenant's had not requested reviews on previous hearings based on fraud. The tenants provided no testimony that any criminal charges had been laid against the landlords for fraud, forgery or harassment.

I accept that the tenants would not necessarily understand from the wording of the 1st point in the settlement agreement that the wording is used to inform the parties of the latest possible date to *vacate* the property. I find, however, that the 2nd point of the settlement agreement is clear in that it states the *tenancy* will continue until May 31, 2010, regardless of when the tenants vacated the property.

I note as well that the tenants did not seek clarification from the Dispute Resolution Officer of the written record of the settlement agreement provided out of the March 12, 2010 hearing and its meaning, a service provided to both parties in a dispute heard by the Residential Tenancy Branch.

As the tenancy continued until May 31, 2010 I find that both parties were bound by their respective obligations under the *Act*, including those obligations related to ending a tenancy. As such, I find the tenants were required to provide notice to end the tenancy in accordance with Section 38 of the *Act*.

Section 38 stipulates that a tenant may end a tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date receives the notice. As such, I find the tenants provided an indication of their intent to end the tenancy by way of vacating the site on March 29, 2010 and March 30, 2010 leaving the earliest possible effective date of the end of the tenancy to be April 30, 2010.

Point 6 of the settlement agreement states the parties agree to exercise any additional goodwill and spirit of cooperation necessary in regard to the above undertakings and had the tenants provided some notification to the landlords at all I could accept that the tenants at least attempted to meet their obligations both under the *Act* and the settlement agreement and therefore mitigate their responsibility to pay rent for April, 2010.

In failing to provide an indication to the landlords that they intended to end the tenancy earlier than was outlined in the settlement agreement the tenants prevented the landlord from having an opportunity to mitigate some loss related to the unpaid rent. For these reasons I find the tenants are responsible for rent for the site for the month of April 2010, in the amount of \$306.00.

I accept the tenants' assertion that they had no control over the weather conditions at the time they moved their manufactured home off the site, Section 30 of the *Act*, however, stipulates when a tenant vacates a site at the end of a tenancy the tenant must leave the site reasonably clean, and undamaged except for reasonable wear and tear.

Based on the photographic evidence, I find the tenants failed to comply with Section 30 and are therefore responsible for the costs associated with cleaning up the site. I accept the tenants' arguments that they should not be held responsible for the landlord transplanting plants to locations that were "more to their liking".

However, from the landlord's submission I find that the landlord moved plants from damaged areas such as where the tenants created ruts from moving the manufactured home out to locations where the tenant left holes from plants and rocks that they had removed.

Again based on the undisputed photographic evidence, I find the landlord's submission of 12 hours of work at \$20.00 per hour to be reasonable as the costs incurred to repair the damage to the site and based on the receipt submitted I accept the landlords' cost incurred for dumping charges to the local landfill in the amount of \$14.00.

Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$610.00** comprised of \$306.00 rent owed; \$240.00 site cleaning; \$14.00 landfill fees; and the \$50.00 fee paid by the landlord for this application.

This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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: September 09, 2010.

Dispute Resolution Officer