



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes

Tenant – MNDC, RR, FF

Landlord – OPR, OPC, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlord. Both files were heard together. The tenant seeks a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement, an Order to reduce his rent for repairs services or facilities agreed upon but not provided and to recover the filing fee. The landlord seeks an Order of possession for unpaid rent, an Order of Possession for cause and to recover the filing fee.

I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing. Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to reduce his rent for repairs, services or facilities agreed upon but not provided?
- Is the landlord entitled to an Order of Possession for unpaid rent?
- Is the landlord entitled to an Order of Possession for cause?

Background and Evidence

The landlord testifies that the tenant rented site #17 on August 20, 2010 at a monthly rent of \$525.00 due on the 1st day of each month. The landlord testifies that the tenant was told when he wanted to rent this site that there was no power but he could access power for his RV from the landlords' shop. They agreed the tenant would pay \$20.00 per month for this power. The landlord testifies the tenant failed to pay the balance of rent for September, 2010 of \$263.00 and the balance of rent for October, 2010 of \$175.00 and failed to pay any rent for November, 2010 of \$525.00. In December, 2010 the tenant paid \$580.00 which gave him a credit of \$55.00 for December. The tenant failed to pay rent for February, 2011 and moved his trailer on February 15, 2011. This left a balance of outstanding rent for this site for 2010 and 2011 of \$1,433.00. The landlord served the tenant with a One Month Notice to End Tenancy on January 18, 2011 for being repeatedly late payment of rent. The tenant did not dispute this Notice.

The landlord testifies that the tenant moved his RV to site #20 as the water lines had frozen at his site #17. The landlord states the tenant did not have permission to move his RV to site #20 and has not paid rent for this site. On March 25, 2011 the landlord served the tenant with a 10 Day Notice to End Tenancy for unpaid rent for site #20 and #17. The landlord testifies the tenant has paid no rent for this site since moving his trailer on to it on February 15, 2011.

The landlord seeks an Order of Possession to take effect as soon as possible.

The tenant does not dispute that he owes rent to the landlord but states he was told he could have a rent decrease as he had no water and had not had proper power since the start of his tenancy. The tenant states he did have permission from the landlord to move his RV onto site #20.

The tenant states his water lines froze and states this is the responsibility of the landlord to ensure he has water. The tenant states he also had a loss of power to his RV as the breakers would blow which were located in the landlords' shop and he could not correct this until the landlord was available. The tenant does not dispute that he plugged his electric heaters in at his RV. The tenant states he moved his RV to site #20 as he could then put the power into his own

name. The tenant states he has had to haul his own water for five months and had to take showers elsewhere. The tenant seeks to recover \$4,999.00 from the landlord in compensation.

The tenant seeks an Order to reduce his rent for repairs, services and facilities that were not provided due to the loss of power and water to both his sites.

The landlord states the pipes froze due to the tenants' negligence in unplugging the thermostatically controlled water lines to the site. The landlord states the water lines must be plugged in at all times due to the extreme temperatures to prevent the pipes freezing through the winter. He states the tenant unplugged these pipes to plug in heaters for his RV as he told the landlord he could not afford to purchase propane. The landlord refers the tenant to the park rules and regulations part C which informs the tenants of their responsibility concerning these services and informing the tenants that they are responsible for the expense of replacing or servicing the water and sewage because of any negligence on the tenants' part. The landlord testifies he did not tell the tenant he would reduce his rent as the tenant had full services for his RV before the tenants own negligence froze the water pipes.

The tenant stated he was not aware of the rule in the park rules and regulations but now he is aware he states he guesses he was negligent in unplugging these pipes.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. With regard to the landlords application for an Order of Possession for cause; the landlord has given the reason that the tenant is repeatedly late paying rent when he resided at site #17. Therefore as the tenant did not dispute this Notice and the evidence shows the tenant was late with his rent for September, October, November, 2010 and February, 2011 the landlord has established his claim for an Order of Possession for this site had the tenant continued to reside there.

I have taken into account the fact that the tenant has moved his trailer from site #17 and has in effect ended his own tenancy at this site #17. Therefore no Order of Possession will be issued

for this site #17 as the landlord is entitled to take possession of the site because the tenant has moved in accordance to the effective date of the One Month Notice.

With respect to the 10 Day Notice to End Tenancy for site #20; the landlord and tenant both agree that the tenant has moved to site #20 and this is the site that the 10 Day Notice to End Tenancy also refers to. Therefore, I have amended the address on the landlords' application to indicate the dispute address is #20. The tenant has not paid rent at this site since moving there on February 15, 2011, and although no written tenancy agreement exists between the parties the landlord has established that a tenancy is in place as he has served the tenant with a 10 Day Notice to End Tenancy. The tenant had five days to pay the outstanding rent or dispute the Notice or the tenancy would end on April 04, 2011. The tenant agrees he did not pay the rent and did not dispute the Notice. Consequently, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the manufactured home site to which the Notice relates pursuant to s. 39(5) of the *Act*. The landlord is therefore entitled to an Order of Possession pursuant to section 48 of the *Act*.

As the landlord has been successful he is also entitled to recover his **\$50.00** filing fee from the tenant pursuant to s. 65(1) of the *Act*.

With regard to the tenants' application; the tenant has applied for a Monetary Order for money owed or compensation for damage or loss because he states he was without water and power. The tenant has not established that the landlord was negligent in allowing the water pipes to freeze and the tenant agrees he was responsible for unplugging the thermostatically heated water pipes. The tenant also stated he did not realize that he was responsible for maintaining these pipes as he was unaware of that section of the rules and regulations given to him with his tenancy agreement. Therefore, as the landlord is not negligent in this matter the tenant is not entitled to compensation from the landlord for the loss of water.

With regard to the tenants' claim for a loss of power; the tenant agrees that he was informed he was to get his power from the landlord' shop. I find in running his own heaters from this power source for his RV instead of using propane it was likely that this would blow the breakers. When the tenant moved to site #20 the power then went into the tenants' name. Therefore, the tenant

has not established any negligence on the landlords' part for his loss of power and his application for compensation of \$4,999.00 and his application to reduce his rent are both dismissed.

Conclusion

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days after service** on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to be reimbursed for the \$50.00 cost of filing this application. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$50.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The tenants' application is dismissed in its entirety without leave to reapply

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 18, 2011.

Residential Tenancy Branch