Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, FF

Introduction

This face to face hearing was convened as a result of the Landlord's Application for Dispute Resolution for an order for monetary compensation for damage to the site or property, for money owed or compensation for damage or loss under the *Manufactured Home Park Tenancy Act (the "Act")*, regulation or tenancy agreement, and to recover the filing fee for the Application.

The Landlords, Tenant, and Tenant's assistant appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to cross-examine the other party, and make submissions to me.

On a preliminary issue, the Tenant had filed a request for an adjournment of the hearing due to ongoing health issues. After a discussion with the Tenant and confirmation of the issues, the Tenant consented to continue with the hearing.

I note that after the hearing and prior to the issuance of this Decision, the Tenant delivered a note to me, which contained a request that the Tenant's Decision be held for pick-up at the Residential Tenancy Branch. The note contained a further reaffirmation of the matters contained in the Tenant's request for an adjournment; however, this information was redundant and disregarded for purposes of this Decision.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order for damage to the site or property and for money owned or compensation for damages or loss and to recover the filing fee?

Background and Evidence

I heard testimony that this tenancy began on or about August 1, 2003 and ended on May 14, 2011, after the Tenant's sale of her manufactured home. Monthly pad rent began at $325.00 and the ending rent was $416.00.

The Landlord submitted relevant documentary evidence as follows:

- A contract of purchase between the Tenant and the purchasers of her manufactured home, which includes a holdback agreement, wherein a portion of the purchase price intended for the Tenant would be kept in trust until a resolution of this dispute;
- The home pad rental\tenancy agreement;
- A listing pamphlet and photos of the manufactured home and water box;
- A significant amount of correspondence from the Tenant to the Landlord, from the Landlord to the Tenant and from the Tenant's realtor to the parties;
- A letter from the Landlord to the Tenant regarding a settlement proposal of the issue in dispute;
- A letter dated September 15, 2010, from the Landlord to the Tenant concerning the Tenant's alleged breach of the Park Rules contained within the tenancy agreement;
- Diagrams of the portion of the manufactured home park where the Tenant's home is located;
- A letter from the Tenant regarding earlier roof construction allowed by the Landlord; and
- A letter from the Tenant regarding past cordial communication between the parties.

The Landlord's claim is for $200.00, which is an estimate for 2 hours of excavation at $85.00 per hour and $30.00 for material.

The Landlord submitted that without permission and contrary to the park rules, the Tenant widened her existing asphalt parking pad and installed a retainer wall, which leads the Tenant to drive over and park on a shared water shut off valve box and a shared sewer clean out concrete valve box for several pad sites. The Landlord stated that it was necessary to remediate the work done by the Tenant before any damage could be done to the boxes, which were not designed for vehicle traffic.

The Landlord submitted that the water boxes were required to be installed due to orders from the municipality and in an effort to upgrade the services to all residents. The Landlord maintained that the boxes were in a service corridor at the home park site and that access is necessary at all times.

The Landlord submitted that the Tenant's widening of her driveway was first noticed by one of the Landlords at a site inspection on September 15, 2010, after which time the Landlord submitted a letter to the Tenant demanding the Tenant to cure the breach of the tenancy agreement.

The Landlord testified that the remediation work on the extended driveway had not commenced as of the day of the hearing and therefore they were not able to submit a receipt or invoice.

The Tenant responded by submitting that she received verbal permission from one of the Landlords to extend her driveway, after the water pipes had been laid, which is when she commenced the work. The Tenant stated that she had received verbal permission on at least two other occasions during the course of the tenancy to alter the property.

The Tenant stated that the water boxes were installed in 2008 and that she, along with other residents had been driving over the water boxes, without incident. The Tenant submitted that the widening of her driveway was on her pad site and it was necessary due to her declining health to be able to park her car closer to her front door.

The Tenant submitted that the driveway widening was done in 2009, but nothing was mentioned by the Landlord until September 2010.

The Tenant's home has now been sold, but $5,000.00 from the proceeds of the sale of the home has been placed in trust pending the resolution of this dispute resolution proceeding, per agreement of the parties.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

Only the evidence and testimony relevant to the issues and findings in this matter are described in this Decision.

Awards for compensation are provided under sections 7 and 60 of the Act. In order to be successful in obtaining an award for damage or loss, it is not enough to allege a violation of the Act, regulations or tenancy agreement by the other party. Rather, the Applicants/Landlords must establish all of the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation of the other party has caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.

Despite the driveway widening occurring in 2009, and the Landlord's knowledge of the work in September 2010, the Landlord has taken no steps to remediate the extended driveway. I therefore find the Landlord submitted insufficient or any evidence to prove steps two and three, that they sustained a loss and therefore could establish no value of the alleged loss.

In the absence of proof of a loss, I **dismiss** the Landlord's Application, without leave to reapply.

As I have dismissed the Landlord's application, I find the Landlord is not entitled to recover the filing fee.

Conclusion

The Landlord's application is dismissed, 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: June 21, 2011.

Residential Tenancy Branch