



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution for a monetary order 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 parties 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.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for money owed or compensation for damages or loss and to recover the filing fee?

Background and Evidence

This fixed term tenancy started on or about August 11, 2009, and current monthly pad rent is \$360.70.

The landlord's monetary claim is \$1,340.00.

In support of this claim, the landlord's relevant testimony included:

During the July, 2010, long weekend the manufactured home park began experiencing a severe water loss, which the park's 4 wells could not keep up with. Due to all the water storage tanks being empty, the landlord had to purchase water from a supplier to get the wells operating again.

During the long weekend, the landlord called a water and well technician to source the problem, which required turning on and off the pumps to check the pressure lines to

each manufactured home. The pumps were required to be monitored and shut off and on all during the weekend so the water supply would not again be depleted.

As the landlord and the technician could not immediately locate the source of the water leak, the landlord and his wife began calling all the tenants. This proved problematic due to many tenants being away for the holiday weekend.

The last tenant the landlord was able to contact was the tenant, who had not been answering his phone during the weekend. The landlord obtained permission to enter the tenant's home and discovered that the entire home had approximately 4" of water.

The source of the water leak was the tenant's broken washing machine hose. The water was contained in the manufactured home and was not visible from the outside.

The landlord's insurer would not pay the claim for the water loss expenses and the landlord was unsuccessful in having the tenant's insurer pay the claim.

The landlord submitted copies of the water technician's servicing bill, which is the amount of the claim, and a portion of the tenancy agreement and park regulations, which confirms that the tenant is responsible for the broken water hose in his home.

In response, the tenant's relevant testimony included:

The tenant received a call on Saturday of the long weekend, informing him of a water advisory. The tenant next received a phone call from the landlord's wife seeking permission to enter his home as the water leak was apparently located in his home.

Water is included in the monthly rent and that each unit was to have a separate meter, as per the agreement, which would have alerted the landlord immediately to the source of the leak, allowing a shut off of the water.

The landlord was negligent in maintaining the water system and in not having a meter with easy access.

The tenant explained that each unit has a water box, some visible, some not, and that all boxes run from a junction box to the meter. The landlord has ownership of the junction box and should be able to turn off the water. The landlord bore the responsibility to know where the water meter was to be able to turn it off in an emergency.

The tenant questioned why it took two days to find the leak, when there are only 18 units in the park.

The landlord responded, saying that the tenant's water box is underneath the tenant's porch and that he could not go under the porch without permission.

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/landlord 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.

With the evidence submitted, I cannot conclude upon a balance of probabilities that the tenant violated the Act, the tenancy agreement, or the regulations. For instance, the landlord did not submit the entire tenancy agreement for me to consider, only the portion he deemed important. Of more compelling interest is the clause in the park regulations submitted by the landlord, which states that "all water use will be metered and excessive water use will not be permitted."

I find this clause supports the tenant's argument that the water leak in his home should have easily been detected much sooner than at the conclusion of the long weekend. Thus I find that the landlord failed to mitigate his loss and thus has not met step 4 of his burden of proof.

Residential Tenancy Branch Policy Guideline 16 suggests that a dispute resolution officer, however, may award “nominal damages,” which are a minimal award. These damages may be awarded where the burden of proof of a significant loss has not been met, but they are an affirmation that there has been an infraction of a legal right.

I find the landlord is entitled to an award of nominal damages of \$300.00 in recognition that the tenant’s leaking washing machine hose caused a water loss to the park.

As the landlord was partially successful, I find he is entitled to a partial return of his filing fee, in the amount of \$25.00.

Conclusion

I therefore **grant** the landlord a monetary order in the amount of **\$325.00**, comprised of \$300.00 for nominal damages and \$25.00 for the filing fee.

I am enclosing a monetary order for \$325.00 with the landlord’s Decision. This order is a **legally binding, final order**, and it may be filed in the Provincial Court (Small Claims) should the tenant fail to comply with this monetary order.

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: July 19, 2011.

Residential Tenancy Branch