



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This was the reconvened hearing to deal with the tenant's application for a Monetary Order for damage or loss under the *Manufactured Home Park Tenancy Act (the "Act")*, regulations or tenancy agreement; and for Orders for compliance, repairs, and authorization to reduce rent. The tenant also applied for an order for the landlord to return his personal possessions.

On August 10, 2011, an Interim Decision was entered, granting the landlord an Order of Possession and should be read in conjunction with this Decision.

The tenant presented that he is no longer residing in his manufactured home, that the manufactured home is currently for sale, and that he has signed a license to occupy in order to sell the home.

The tenant no longer is in need of Orders for compliance, repairs, and authorization to reduce rent, but presented that he is still seeking a monetary order. Thus the hearing proceeded on that request.

The parties and the tenant's witnesses appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to make submissions to me.

Preliminary Issue:

The tenant presented that he has now increased the amount of his request for a monetary order, from \$669.80 listed in his application, to the new amount of \$1,171.25 to cover the time period until the end of his tenancy.

I allowed the tenant's request to amend his application to include an increase in his monetary claim to the amount of \$1,171.25.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for damage or loss due to the landlord's breach of the Act or tenancy agreement?

Background and Evidence

In support of his application, the tenant testified that on May 13, 2011, the landlord's handyman was working on an adjacent lot when an irrigation pipe burst, causing a stream of water and mud to hit the tenant. The tenant further submitted that on May 17, 2011, he discovered the water hose had been laid across his pad site, behind his shed.

The tenant stated that this hose had been previously run along the edge of other sites, not his and had never been on his lot before.

The tenant stated that he tried numerous times, unsuccessfully, to have the landlord remove the hose.

The tenant stated that the presence of a high pressure water hose near his bedroom caused great stress and anxiety, for which he should be compensated.

The tenant's wife confirmed that the presence of the hose near their bedroom caused them stress and anxiety.

The tenant's witness submitted he was told by the city that the pressure in the water line was between 80-140 psi. However, the witness submitted no evidence of this statement.

In response, the landlord submitted stated that typically in the spring, the pipes do need replacing and that this was occurring at the time of the incident on May 13, 2011.

The landlord further submitted that the irrigation pipe across the tenant's lot has been there since he acquired ownership of the manufactured home park 20 years ago and therefore has been there since the tenant moved in. The landlord also stated that he would be lucky to have water pressure of 60 psi, as confirmed by his gauge.

The landlord further submitted that he could not make repair to the pipe across the tenant's lot due to the ongoing problems with the tenant, such as the tenant covering the pipe with debris and pouring concrete under the pipe, which resulted in him turning off the water and allowing vegetation on the manufactured home park to die off.

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 applicant/tenant must establish all of the following:

First proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly** proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

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

In addressing the tenant's claim for other monetary compensation, I find I am unable to award the tenant any compensation. In reaching this conclusion, I am guided by Residential Tenancy Branch Policy Guideline section 16, Claims in Damages.

There is no substantiation, or proof, that the tenant has suffered, has incurred, or will incur these claims.

A claim in Tort is a personal wrong caused either intentionally or unintentionally and in all cases, the applicant must show that the respondent breached the care owed to him or her and that the loss claim was a foreseeable result of the wrong. I do not find this claim to rise to that requirement.

I do not find that the tenant has met the requirement for a claim for aggravated damages, such as would be for mental distress, as I do not find the actions of the landlord to be deliberate, negligent act or an omission. Further the claim for aggravated damages must be specifically sought.

Due to the above, I find the tenant has provided insufficient evidence to substantiate the merits of his claim.

Conclusion

I therefore dismiss the tenant's application, 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: October 06, 2011.

Residential Tenancy Branch