



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with an Application by the Tenant for a monetary order for compensation for damage or loss.

The Landlord and Tenant attended the hearing, gave affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matter(s)

The Tenant stated that she had a previous hearing on November 24, 2010 which dealt with her claim for compensation for damage and loss to that date. The outcome of that decision was that the Tenant's Application was dismissed as she had failed to prove that she was entitled to any compensation for damage and loss.

The Tenant states that her current claim is for compensation for damage and loss that has occurred after that date. I find that the Tenant's Application filed on October 06, 2011 relates to issues that occurred after November 24, 2010 and the Tenant is requesting compensation for damage and loss for issues that occurred after the previous decision was made.

Issue(s) to be Decided

Has the Landlord breached the *Manufactured Home Park Tenancy Act*, the "Act", Regulation, or tenancy agreement, entitling the Tenant to compensation for damage or loss?

Background and Evidence

The Landlord and Tenant have a tenancy agreement which commenced in May 2009. The parties stated that they do not have a written tenancy agreement. The parties state that there are rules and regulations for the manufactured home park which apply to the Landlord and Tenant, and that the parties have signed these when the tenancy commenced. The parties did not submit a copy of these rules and regulations as evidence. The parties agree that the Tenant rents a pad in a manufactured home park for \$254.00 per month.

The Tenant stated that she suffers from a medical condition, a head injury that she received in 1993. The Tenant stated that her anxiety and stress has worsened from incidents that have occurred during her tenancy. The Tenant stated that she has post traumatic stress, including flashbacks as a result of several recent incidents in the manufactured home park. The Tenant stated that she feels unsafe at the manufactured home park and in her rental unit. The Tenant stated that she has a dog and people she can phone when she is trying to convince herself that she is safe, but she still feels she has no control over her safety in and around her home. The Tenant stated that the Landlord is violating the rules and regulations of the manufactured home park which they signed at the commencement of the tenancy.

The Landlord stated that this Tenant is a frequent complainer, and they do not receive as many complaints from the other tenants. The Landlord stated that if the Tenant is not comfortable living alone she should consider getting someone to live with her or consider moving. The Landlord's agent stated that they investigate all incidents raised by tenants and call the police if necessary for assistance. The Landlord's agent stated that they cannot evict the other tenants that this Tenant is complaining about without being able to prove cause to end those tenancies. The Landlord's agent stated that she is the manager of the manufactured home park and if she is not on site, that she has told the tenants to call the police if an incident arises that cannot wait for her return.

The Tenant stated that on December 04, 2010 there was a stabbing at the manufactured home park in a nearby rental site and that she was quite disturbed by the police, fire, and ambulance activity that came to the neighbourhood deal with that incident. The Tenant stated that residents of the manufactured home site called the police.

The Landlord's agent stated that she had received complaints about the stabbing incident from the Tenant and other residents. The Landlord's agent stated that she called the police to determine what happened on December 04, 2010, however, the

police declined to provide the Landlord details due to privacy issues. The Landlord's agent stated that she spoke with the tenants connected to the stabbing victim, who had been residing with them, and found out that it was a guest of the stabbing victim that caused the incident and that the victim and the guest were no longer in the manufactured home park during the month of December. The Landlord's agent states that in January 2011 the victim returned to the trailer park, however the guest did not. The Landlord states that those tenants moved out of the manufactured home park by March 30, 2011 as the Landlord gave them Notice to vacate.

The Tenant stated that on February 16, 2011 one of the other tenants "C" at the manufactured home park smelled of alcohol and threatened her while she was walking in the manufactured home park. The Tenant stated that she was cornered by C and accused of calling family services on her, and said she would kill anyone who tries to take her kids. The Tenant denied calling family services and C asked her to take her to church for an AA meeting. The Tenant stated that she and another tenant took C to the AA meeting, but the meeting would not allow C to stay and so the Tenant and another tenant took C to the hospital. The Tenant stated that the hospital called the police as C ran away, and when the police located her they took her home. The Tenant stated that she feels unsafe due to the threats and volatile behaviour of C and states that she is not a friend of hers.

The Landlord stated that there were some issues with C, but she is a recovering alcoholic who is not currently drinking and that they've responded to the Tenant's complaints but they lack evidence to prove cause to evict C at this time.

The Tenant stated that on July 28, 2011 a male guest of C's came to the Tenant's rental site and knocked on her door and suggested sex. The Tenant stated that he smelled of alcohol and he tried to come into her home, but she told him to leave and shut the door. The Tenant stated she called the police, who came and talked to this guest of C's. The Tenant stated she was very frightened and has been in contact with Victim Services for help in dealing with this incident. The Tenant stated that this guest of C's is not a resident of the manufactured home park yet he stays with C overnight and still keeps coming around the park.

The Landlord's agent stated that she was made aware of the incident by the Tenant, but that this guest of C is not a resident of the manufactured home park, and the Landlord has never seen him. The Landlord's agent states that C promised that this male guest is no longer coming to her rental site. The Landlord's agent stated that they lack evidence to prove cause to evict C at this time.

The Tenant stated that she cannot afford counselling and this is not provided by Victim Services. She stated she would like to go to counselling and that the Landlord should pay for this at a cost of \$120.00 per visit. The Tenant stated that she does not feel safe living in this manufactured home park any longer and she would like the Landlord to pay for the cost of her move. The Tenant has not found somewhere to move to yet and stated she has submitted no receipts as she has not incurred any costs at this time. The Tenant stated that she feels she is owed more than \$25,000.00 but that this is the maximum amount she was allowed to claim for her damages and losses including lack of peaceful enjoyment, future counselling and potential moving costs. The Tenant is seeking a monetary order for \$25,000.00 to compensate her.

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard. To prove a loss and have the Landlord (Respondent) pay for the loss, the Tenant (Applicant) must prove the following:

- that the damage or loss exists;
- that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- the actual amount required to compensate for the claimed loss or to repair the damage; and
- that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 22 of the Act states:

Protection of tenant's right to quiet enjoyment

22 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the manufactured home site subject only to the landlord's right to enter the manufactured home site in accordance with section 23 [*landlord's right to enter manufactured home site restricted*];

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

Section 8 of the Schedule in the Manufactured Home Park Tenancy Regulation states:

8 Occupants and guests

(1) The landlord must not stop the tenant from having guests under reasonable circumstances on the manufactured home site and in common areas of the manufactured home park.

(2) The landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests.

(3) If the number of occupants on the manufactured home site is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved by applying for dispute resolution under the *Manufactured Home Park Tenancy Act*.

Although the Tenant complained about the issues to the Landlord shortly after they happened, I do not find that these were foreseeable events or due to Landlord negligence. A Landlord is not usually held responsible for the actions of other tenants, unless neglect is proven, such as they sit idly by while other tenants unreasonably disturb a tenant or they fail to take reasonable steps to deal with the issues once notified by the complaining tenant. I find that the Landlord responded to each of the Tenant's issues and took steps to investigate the issues to determine if there was evidence to prove that any other tenants involved in any incidents should be evicted. I find that the Landlord's response to each of the Tenant's issues was reasonable. I do not find that the Landlord contravened section 22 of the Act. The Landlord responded to and addressed the Tenant's issues in a reasonable time frame.

I find that the Tenant remained in residence at the rental site at all material times. The Tenant did not prove that she had any quantifiable losses or incurred any costs, and provided no copies of receipts to show any costs incurred. Neither party provided a copy of the manufactured home park rules and regulations which apply to this tenancy, so I cannot find whether either party has breached any of these. The Tenant failed to provide sufficient evidence to support her claim for \$25,000.00 in damages and losses.

I find that the Tenant is not entitled to any compensation for losses or damages under the Act, regulation or tenancy agreement. As a result the Tenant's claim is dismissed

Conclusion

The Tenant's claim is dismissed.

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: December 14, 2011.

Residential Tenancy Branch