

DECISION

Dispute Codes MNDC

Introduction

This hearing was convened in response to an application by the tenant seeking money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the aggregate of \$25,000 for damage to her manufactured home.

Both parties attended the hearing and were each given opportunity to discuss their dispute, present relevant evidence, make relevant submissions, and provide testimony. Neither party requested an adjournment. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The hearing proceeded on the merits of the application. The onus was on the applicant to prove their claim.

Issue(s) to be determined

Is the tenant entitled to a Monetary Order, and if so determined, in what amount?

Background and Evidence

The applicant is the owner of a manufactured home on a rental pad within the landlord's manufactured home park. The undisputed evidence in this matter is that the tenant pays \$486 per month, and that the tenancy began in 2003 and that there was a valid tenancy agreement in effect on November 22, 2010 - the date the applicant's manufactured home was damaged as the result of a fallen tree on the manufactured home during a severe wind storm.

The tenant claims they did not hold insurance on their home, and, the landlord's insurer has declined to satisfy a claim for remediation of the tenant's home. The tenant testified that in their determination, the landlord was negligent in their management of the tree which fell.

The tenant submitted a series of photographs, the park Rules and Regulations, and a written estimate for the work required to bring the home to original condition, in the estimate of \$20,000 plus HST. The photographs depict the damage to the home and one photograph displays the stump of the fallen tree at the perimeter of the tenant's home. The tenant claims the photograph of the stump depicts rotting. The tenant also

highlighted the park rules and regulations regarding trees on the home park. In part, 6(a) “Trees: No tree or limb cutting of Timber town Trees by tenant is permitted”.

The parties do not dispute the management of trees is the responsibility of the landlord. The tenant argues that the condition of the fallen tree was compromised and the landlord’s due diligence should have identified this tree as a “dangerous tree”. The tenant claims the landlord should have foreseen the tree could potentially fall and cause damage. The tenant is, effectively, alleging strict liability on the part of the landlord.

The landlord submitted they “tarped” the home’s roof and cleaned up the property to the extent permitted by the tenant and went through the insurance options available to them and the tenant’s damage was not covered by the landlord’s insurance. They were advised if the tenant had insurance it likely would have covered the tenant’s loss.

The landlord also submitted a series of records respecting all the trees in the park. The landlord testified that all trees in the park are tracked and monitored, including annually inspected by their arborist, with emphasis on safety for residents and their property as well as maintenance for power lines, and for aesthetics. The landlord testified (and submitted evidence) they specifically place resources on addressing over 80 trees which are potentially dangerous – “Danger trees”. Each such tree is listed as to their location, type of tree, assessment of the tree, any work required, and recommendations for future care of the trees. The landlord testified that their arborist and the landlord work together in maintaining the trees and minimizing the risks. The landlord, effectively, testified they take reasonable care in mitigating the potential hazards imposed by the trees inherent in their park, and do their best given the scope of the work and their resources but that in this matter the unforeseen occurred.

Analysis

On preponderance of all the evidence submitted in this matter respecting the merits of the application, and on the balance of probabilities, I have reached a decision.

The *Manufactured Home Park Tenancy Act and Regulations* address that the landlord is responsible for maintaining the home park in a reasonable state of repair.

The Regulations, in part, state the landlord’s responsibilities as follows:

Schedule

7 Repairs

(1) Landlord's obligations

(a) The landlord must provide and maintain the manufactured home park in a reasonable state of repair, suitable for occupation by a tenant. The landlord must comply with health, safety and housing standards required by law.

(b) If the landlord is required to make a repair to comply with the above obligations, the tenant may discuss it with the landlord. If the landlord refuses to make the repair, the tenant may seek an order of the director under the *Manufactured Home Park Tenancy Act* for the completion and costs of the repair.

(c) The landlord is not required to maintain or repair improvements made to the manufactured home site by a tenant occupying the site, or the assign of the tenant, unless the obligation to do so is a term of this tenancy agreement.

On preponderance of the evidence, I prefer the landlord's evidence in finding the landlord exercised sufficient due diligence in the reasonable maintenance of the trees in the park.

In this type of matter the burden of proving claims of loss and damage rests on the claimant (tenant) who must establish, on a balance of probabilities that they have suffered a loss due to the landlord's neglect, or failure to comply with the Act. And, if so established, did the claimant (tenant) take reasonable steps to mitigate or minimize the loss? Section 7 of the Act states the foregoing as follows:

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Effectively, the tenant must satisfy each component of the following test.

1. Proof the loss exists,
2. Proof the damage or loss occurred *solely* because of the actions or neglect of the Respondent in violation of the *Act, Regulations* or the tenancy agreement
3. Verification of the *actual amount* required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to minimize the loss or damage.

The tenant bears the burden of establishing their claim by proving the existence of the loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* or Regulations on the part of the landlord. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the claimant must show that reasonable steps were taken to address the situation and to mitigate the losses that were incurred.

I find the tenant has not provided sufficient evidence showing the landlord was negligent, or that non-compliance with the Act or Regulations on the part of the landlord resulted in the tenant's loss. I find the tenant has not met the test for damage and loss and as a result **I dismiss** the tenant's application, without leave to reapply.

It must be noted that the style of cause for this matter (the named litigants) reflects an employee of the owner as the sole Respondent. I have dismissed the application on the merits. Had my Decision resulted in an award for the Applicant, it would not have been enforceable upon the Respondent as they are not the owner.

Conclusion

Having considered this matter on the merits, the tenant'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*.

Residential Tenancy Branch