



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 for Dispute Resolution by the tenant for a monetary order for compensation for damages under the Act and an order to have the landlord comply with the Act.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Issue(s) to be Decided

Is the tenant entitled to compensation for damages under the Act?
Should the landlord be ordered to comply with the Act?

Background and Evidence

The parties agreed that the tenant rents a site within a manufactured home park.

The tenant testified that he seeks an order that the landlord is to comply with the park rules as the landlord allows her dog to be unrestrained when in the park, which is against park rule 13.

The landlord testified that she is not a tenant and does not live in the park, therefore, is not obligated to comply with the park rules.

The tenant testified that on September 8, 2012, he drove into the park and he stopped his vehicle to talk to the landlord. The tenant stated when the landlord placed her hand inside his vehicle his dog barked and this caused the landlord's dog to jump on his vehicle. The tenant stated a few days later he noticed that area was scratched from the claws of the landlord's dog.

The tenant testified that he did not have comprehensive insurance on his vehicle and the estimate to repair the damage was \$856.14. Filed in evidence is an estimate of repair.

The landlord testified that on September 8, 2012, when the tenant stopped his vehicle and she when bent down to talk to him through the window the tenant's dog bite her on the hand. The landlord denies that her dog jumped on the tenant's vehicle causing damage.

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 one party pay for the loss requires the claiming party to prove four different elements:

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

In this case, the tenant has the burden of proof to prove a violation of the Act by the landlord and a corresponding loss.

The evidence of the tenant was that the landlord allows her dog to be unrestrained when in the manufactured home park. The evidence of the landlord was that the park rules only apply to the tenants that reside in the park and as she does not reside in the park those rules do not apply to her.

Park rules

- 32 (1) *In accordance with the regulations, a park committee, or, if there is no park committee, the landlord may establish, change or repeal rules for governing the operation of the manufactured home park.*

(2) Rules referred to in subsection (1) must not be inconsistent with this Act or the regulations or any other enactment that applies to a manufactured home park.

(3) Rules established in accordance with this section apply in the manufactured home park of the park committee or landlord, as applicable.

[Emphasis added.]

Park rules are established and apply in the manufactured home park of the landlord, and all parties including any guests attending the park are required to comply with those rules. I find it would be inappropriate for a landlord to set rules for in the park and then not comply with those rules when attending to the park. I order, the landlord to comply with the park rules as established.

The evidence of the tenant was the landlord's dog scratched his vehicle. The evidence of the landlord was that her dog did not scratch the tenant's vehicle.

In this case each party has provided a version of events in one way, and both versions are equally probable version of the event, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. As a result, I find the tenant has failed to provide sufficient evidence to prove the landlord's dog damaged his vehicle. Therefore, I dismiss the tenant's claim for compensation.

Conclusion

I order, the landlord to comply with the park rules as established, when in the manufacture home park.

The tenant's application for compensation 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: January 16, 2013

Residential Tenancy Branch

