



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Phillips Mobile Park
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MNDC, OLC, PSF, RR and FF

Introduction

This application was made by the tenant seeking to have set aside a Notice to End Tenancy for unpaid rent, a monetary award for loss or damage under the rental agreement or legislation, orders for landlord compliance and provision of services, a rent reduction and recovery of the filing fee for this proceeding.

As the parties gave evidence that there was no Notice to End Tenancy, and as the loss of electrical service that gave rise to this dispute has been remedied, the requests to set aside the notice, landlord compliance and provision of services are dismissed as moot.

Issue(s) to be Decided

This application now requires a decision on whether the tenant is entitled to a monetary award as requested.

Background and Evidence

This tenancy began on August 1, 2012 and rent is \$465. There is no written rental agreement although both parties claim to have petitioned the other to finalize one. While there are two applicants named on the application, a woman and her grandson, only the grandson lives in the rental unit.

During the hearing, the parties concurred that electrical service to the rental unit had been lost as a result of a fire on December 28, 2012 which destroyed two neighbouring manufactured homes in the park.

The landlord stated that the entire area surrounding the subject pad site had been fenced off by authorities for about a month in conjunction with an investigation into the fire, during which the hydro pole serving the rental unit had also been destroyed.

The tenant expressed concern that power to a number of other units had been restored by the landlord but her own had been delayed by three months, partly because the landlord had declined to pay the initial \$2,500 estimate to carry power to the unit. The tenant had no insurance coverage for such an eventuality.

The landlord stated that the entire incident had cost the park over \$22,000 and that he simply did not have the funds to provide extraordinary service to the site in question until installation of the new pole had been completed which had been subject to a number of delays beyond his control.

He stated further that he had attempted to implement a temporary solution by providing the tenant with an extension cord, but that plan had been withdrawn following an incident in the park office in which he, and his ailing brother, had felt threatened by the aggressive demands of the male tenant.

The parties concur that the power service had been restored shortly before the hearing at a cost to the tenant of \$1,064.

Analysis

As a general rule, landlords in manufactured home parks are responsible for providing services to the site boundary and the tenant is responsible for the cost of extending those services from the boundary to the manufactured home.

Therefore, I find that the tenant must bear the \$1,064 cost of restoring the service to the rental unit.

However, section 26 of the *Act* places the burden of maintaining the property in a manner that complies with housing standards required by law, including essential services as stated in section 21 of the *Act*.

Unless the landlord has sought refuge in the doctrine of frustration, which he has not Done in this matter, the landlord may still be liable for compensating a tenant for a loss of service, whether or not the loss arises from the landlord's negligence.

I find that the manufactured home was largely uninhabitable due to the loss of power for the greater part of three months due to the fire and consequent loss of power. However, at the same time, the tenants did benefit marginally from their continued use of the site for storage of the home.

Therefore, find that the tenants are entitled to return all but \$100 of the monthly rent for each of January, February and March of 2013, leaving them with a credit of \$365 x 3 months in rent abatement, a total of \$1,095.

As authorized by section 65(2) of the *Act*, I hereby order that the tenant may recover the amount owed by withholding rent until the \$1,095 has been fully used. As per diem rent is \$15 per day, I find that the tenant may withhold rent for all of April 2013, all of May 2013 and must pay \$300 for June 2013, after which rent reverts to \$465 per month.

Having granted rent abatement, I make no award for alternate accommodation as requested by the tenants.

As I find the tenants contributed to this dispute by unreasonably aggressive conduct toward the landlord and his brother, I decline to award the filing fee to the tenant.

Conclusion

The tenant must pay for restoration of electrical service to the manufactured home but may recover awarded rent abatement by paying no rent until June 2013 for which month they will owe \$300.

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: March 22, 2013

Residential Tenancy Branch

