



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, OPR, MNDC, MND, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for unpaid rent, for damages to and cleaning of the rental unit, for compensation under the Act and the tenancy agreement, and to recover the filing fee for the Application.

Both parties appeared at the hearing, and the Landlord was assisted by an Agent. The hearing process was explained and the participants were asked if they had any questions. Both parties provided 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 to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Preliminary Matters

The Landlord has made this Application under the *Manufactured Home Park Tenancy Act*, as the rental unit was a trailer in a manufactured home park. However, I have amended the style of cause in this matter, as the Tenants were renting the entire trailer from the Landlord, did not own the trailer themselves and the Landlord was paying the park for the site rental. Therefore, in these circumstances I find the parties are governed by the *Residential Tenancy Act*.

The Landlord had attempted to join this Application with an earlier one made by the Tenants, and at that time served the Tenants with her evidence. However, the Landlord was unable to join the two matters and this hearing for the Landlord's Application was scheduled. The Tenant agreed she had received the evidence for the first matter and claimed she did not receive the evidence for this Application. The Landlord explained it

was the exact same evidence and in fact, she had separately served the Tenants with the evidence for this hearing. As the Tenant had the evidence of the Landlord and agreed to refer to it, I allowed the evidence of the Landlord and the hearing proceeded.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenants?

Background and Evidence

This tenancy began in or about June of 2011, and at that time the landlord of the property was the spouse of the current Landlord. The prior landlord passed away since this tenancy began and the current Landlord has now taken over.

I note it is unclear from the evidence before me if the Tenants actually signed a tenancy agreement with the previous landlord, or, if they had a sublet from a previous tenant, in order to occupy the rental unit. In evidence the Landlord has supplied a copy of a "sublease application" form; however, there is no mention of a previous renter from which the Tenants may have taken the sublease from, and in examining the evidence before me, it is just as likely the prior landlord may have used this form in error. In any event, the sublease portion of this document is unsigned and no "head tenant" is named.

I also note that during the hearing the Landlord stated that her deceased spouse had felt bad for the situation of the Tenants and that is why he had rented the trailer to them. The Landlord acknowledged that her spouse had not been the best at keeping records or paperwork.

The Tenants deny ever signing a "contract" with the prior landlord.

Both parties agree no incoming or outgoing condition inspection reports were performed, as required under the Act and regulations.

On February 2, 2013, the Landlord issued the Tenants a 10 day Notice to End Tenancy for unpaid rent for February 2013. The Tenants did apply to dispute that Notice, as explained above; however, at the time of that hearing the Tenants had vacated the rental unit and their Application was dismissed.

The Landlord now claims for \$300.00 in unpaid rent from January 2013, and for \$475.93 in rent for February, pro-rated for the days the Tenants were in the rental unit before they vacated.

In addition to rent, the Landlord is also claiming for approximately \$4,200.00 for repairs to and cleaning of the rental unit.

The Landlord is claiming the Tenants damaged the walls in the rental unit and this required patching and painting. The Landlord is also claiming that the Tenants caused one of the pipes underneath the trailer to burst, as they ceased using gas heat at the rental unit and used only electrical heat.

The Landlord further claims the Tenants are responsible for a leaking roof, which damaged the ceiling paint. The Landlord also claims the Tenants kicked in a door at the rental unit, and caused damage to the stove.

The Landlord also claims the Tenants damaged windows in the trailer, caulking around the tub, and left the rental unit unclean. There are many other items claimed for by the Landlord.

In evidence the Landlord has supplied receipts, photographs and statements from workers who attended the rental unit to perform work.

In reply, the Tenants submit that they did not damage the property and left it in a clean condition. They deny all the claims of the Landlord.

The appearing Tenant testified that the door frames were damaged when they moved in and they had complained to the prior landlord that they could not properly close or lock the doors.

The appearing Tenant testified that the stove always worked for her and it was not damaged by the Tenants.

The Tenant testified that she had understood that the broken pipe under the trailer was the fault of the park, not the Tenants.

The Tenant testified that the roof leaked because there was snow on the roof of the trailer and the Landlord did not have someone clean the snow off.

The appearing Tenant further testified it was their position that they did no damage to the trailer and they left it in the condition it was rented to them.

Analysis

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

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage or loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this situation, I find the Landlord has insufficient evidence to prove that the Tenants violated the *Act* or tenancy agreement with regard to cleaning and making repairs before vacating the rental unit. The Landlord and the Tenants both have an equally probable version of events, and in the absence of an incoming condition inspection report, or other corroborating evidence, there is insufficient evidence as to the condition of the rental unit when the Tenants took possession. Therefore, I dismiss the claims of the Landlord regarding cleaning and repairs at the rental unit.

However, I do find that the Tenants have failed to pay the rent to the Landlord as claimed. Under section 26 of the Act, the Tenants were required to pay the Landlord rent on the day it was due. I find the Tenants have failed to do this and this was a breach of section 26 of the Act.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find that the Landlords have established a total monetary claim of **\$825.93**, comprised of unpaid rents rent for January and February of 2013, and the \$50.00 fee paid for this application.

I grant the Landlords an order against the Tenants under section 67 for the balance due of **\$825.93**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Landlord has proven that the Tenants failed to pay rent and have breached the Act in doing so. The Landlord is granted a monetary order for unpaid rent and the filing fee for the Application. The Landlords' other claims are dismissed without leave, as there was insufficient evidence to prove the Tenants breached the Act or tenancy agreement.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: April 12, 2013

Residential Tenancy Branch

