



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, RP, FF

Introduction

This hearing dealt with an application by the tenant seeking a monetary order for money owed or compensation for damages or loss under the Act, regulation or tenancy agreement, an order to have the landlord comply with the Act, regulation or tenancy agreement, make repairs to the unit site or property, and to recover the filing fee for this application. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issues to be Decided

Is tenant entitled to any of the above under the Act, the regulation or the tenancy agreement?

Background and Evidence

The tenancy began on or about April 2007. Rent in the amount of \$285.00 is payable in advance on the first day of each month.

The tenant gave the following testimony:

The tenant stated that she was successful in a separate dispute resolution hearing in having the Arbitrator order the subject landlord to cut down some overhanging trees in the manufactured home park. The tenant stated that the work was to be done by June 30, 2013 and the landlord has not complied. The tenant stated that she is seeking the

return of all her rent from May- August as compensation but at the very least half a months' rent for each of those months.

The landlord gave the following testimony:

The landlord stated that these are "significant trees" and that its more involved than what the tenant thinks. The landlord stated numerous times," I'm not here to argue, I'm doing my best and I will do my best to get it done".

Analysis

It was explained to the parties that the only issue to be dealt with in this hearing was the matter of monetary compensation. An Arbitrator in a separate hearing has already made a ruling that the trees are to be cut and that I have no jurisdiction to rehear any of those issues. Both parties indicated that the understood.

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The landlord acknowledged that she had not complied with the order but was making earnest efforts in trying to address the matter in the near future. I do accept that the tenant is entitled to some compensation but not the amount she was seeking. The

tenant failed to show how she has been affected and what loss she has incurred. In addition, I find that the tenant is entitled to compensation from July 1 onward as stated in the previous Arbitrators' decision and not for the months of May and June. Based on all of the above, specifically the acknowledgement of the landlord not correcting the situation as ordered, I find that a nominal amount of \$25.00 which is to be deducted each month until the landlord complies with the order. The tenant is entitled to "back compensation" for July and August $\$25.00 \times 2 \text{ months} = \50.00 plus the recovery of the \$50.00 filing fee for a total of \$100.00. The tenant is entitled to a \$100.00 reduction in rent payable for the month of September 2013. As stated above the tenant will then be entitled to a rent reduction of \$25.00 commencing October 2013 and each month thereafter until the landlord complies with order to cut the trees. Once the landlord has complied with that order the rent will return to its full amount due on the first of each month.

Conclusion

The tenant has been successful in her application.

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: August 07, 2013

Residential Tenancy Branch

