



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding E.K. SMITH CONSTRUCTION COMPANY LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution under the *Manufactured Home Park Tenancy Act* (the “Act”), and dealt with the Applicant’s claim for a monetary award of \$25,000.00 and to recover the filing fee for the Application.

The monetary award sought was comprised of legal costs incurred by the Applicant in previous proceedings before both Residential Tenancy Branch (“the Branch”) and the Supreme Court of British Columbia, compensation for alleged losses due to the alleged actions of the Landlord, and a request for aggravated, exemplary or punitive damages against the Landlord.

Both parties appeared at the hearing and both were represented by legal counsel. The hearing process was explained and the participants were asked if they had any questions. Both parties were affirmed and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issue

Is there jurisdiction under the Act?

Background and Evidence

The parties have been to two prior dispute resolution proceedings, and the file numbers for those matters are referenced on the front page of this decision.

At the outset of the hearing before me, legal counsel for both parties made submissions on whether or not there was jurisdiction under the Act for the matter to be heard. The Landlord’s position is that there is no jurisdiction under the Act.

Legal counsel for the Landlord explained that the subject manufactured home had been owned by the deceased mother of the Applicant (the "Mother"), since 1992. The only tenancy agreement established for possession of rental site in the park owned by the Landlord was between the Mother and the Landlord.

After the Mother passed away the Landlord claimed against the Applicant in her personal capacity for arrears of rent. An award of unpaid rent was made against the Applicant (as the respondent) in the first decision.

The Applicant did not appear at the first hearing and was unsuccessful in a Review Application before the Branch. Subsequently, the Applicant applied to the Supreme Court of British Columbia for Judicial Review.

According to Legal Counsel for the Applicant, the Judicial Review did not proceed as the Landlord had obtained the monetary award using an incorrect legal name for the Landlord in the first decision.

Both parties referred to a second decision made by a different Arbitrator (again referenced on the cover page of this Decision). Both parties appear to agree that the second decision found there was no tenancy agreement between the Landlord and the Applicant.

Legal counsel for the Landlord also submitted that the second decision held that the tenancy was not assigned to the Applicant either and therefore, there is no Landlord and tenant relationship with the Applicant.

Legal counsel for the Applicant agreed that the Applicant is not a tenant, both during the hearing and in written submissions. Legal counsel submitted that nevertheless, section 51 of the Act allows a "person" to make an Application for dispute resolution, and should be read broadly to allow for an Application such as the one made here.

Legal counsel for the Applicant also submitted that the legal fees the Applicant incurred were a result of the Landlord claiming against the Applicant rather than the estate of the deceased Mother, and were incurred as a result of the Landlord maintaining the incorrect legal position against the Applicant.

The Applicant further alleges that the interference of the Landlord with a realtor caused the Applicant to lose potential sales of the manufactured home, causing her financial losses.

Analysis

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

Section 6 of the Act set out that, “The rights, obligations and prohibitions established under this Act are enforceable between a **landlord and tenant under a tenancy agreement**.” [Emphasis added.]

I find by the Applicant’s own admissions and submissions that she is not a tenant. I further find that there is no evidence of a tenancy agreement between the Landlord and the Applicant.

Section 51 of the Act, read in its entirety, sets out that,

51 (1) Except as restricted under this Act, a person may make an application to the director for dispute resolution in relation to a dispute **with the person's landlord** or tenant in respect of any of the following:

- (a) rights, obligations and prohibitions under this Act;
- (b) rights and obligations under the terms of a tenancy agreement that
 - (i) are required or prohibited under this Act, or
 - (ii) relate to
 - (A) the tenant's use, occupation or maintenance of the manufactured home site, or
 - (B) the use of common areas or services or facilities.

[Emphasis added.]

The restrictions referred to in the first words of the above section are found in section 4 of the Act and do not apply to the facts before me.

I also note that Policy Guideline 27, which explains jurisdiction, sets out that,

“The Legislation does not confer upon the [Branch] the authority to hear all disputes regarding every type of relationship between two or more parties. The [Branch] only has the jurisdiction conferred by the Legislation over landlords, tenants and strata corporations.”

Having found the Applicant is not a tenant as defined under the act, and that there is no tenancy agreement between the Applicant and the Landlord, I find the Act does not apply to this relationship. Therefore, I find I have no jurisdiction in this dispute under the legislation and I dismiss the Application without leave to reapply.

In the alternative, even if there is jurisdiction here (which I do not find), a party with standing under the Act may only recover damages for the direct losses or breaches of the Act or the tenancy agreement, but “costs” incurred with respect to filing a claim or responding to a claim for damages are limited to the cost of the filing fee, which is

specifically allowed under section 65 of the Act. In other words, there would be no jurisdiction under the Act for an award of legal fees or costs, such as those claimed here.

In the further alternative, even if there is jurisdiction here (which I do not find), there is no jurisdiction under the Act to provide awards for the other damages sought.

While Policy Guideline 16 suggests that aggravated damages may be awarded in rare and specific circumstances, I do not find the circumstances here would have merited such an award.

As explained below, aggravated damages are awarded to compensate for non-pecuniary losses, and there is insufficient evidence the Applicant suffered or even claimed for these. Policy Guideline 16 explains,

“In addition to other damages an arbitrator may award aggravated damages. These damages are an award, or an augmentation of an award, of compensatory damages for **non-pecuniary losses**. (Losses of property, money and services are considered "pecuniary" losses. **Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of self-confidence, loss of amenities, mental distress, etc. are considered "non-pecuniary" losses.**)

Aggravated damages are designed to compensate the person wronged, **for aggravation to the injury** caused by the wrongdoer's willful or reckless indifferent behaviour. They are measured by the wronged person's suffering.

- The damage must be caused by the deliberate or negligent act or omission of the wrongdoer.
- The damage must also be of the type that the wrongdoer should reasonably have foreseen in tort cases, or in contract cases, that the parties had in contemplation at the time they entered into the contract that the breach complained of would cause the distress claimed.
- They must also be sufficiently significant in depth, or duration, or both, that they represent a significant influence on the wronged person's life. **They are awarded where the person wronged cannot be fully compensated by an award for pecuniary losses.** Aggravated damages are rarely awarded and must specifically be sought.

An arbitrator **does not have the authority to award punitive damages**, to punish the respondent.”

[Emphasis added.]

Conclusion

Based on the above reasons I find the Act has no jurisdiction in this matter and I dismiss the Application without leave to reapply.

In the alternative, even if there is jurisdiction here (which I do not find), I find the Applicant's claims were not within the jurisdiction of the Act or the discretion of the Arbitrator.

The parties may seek legal advice as to the proper forum to resolve this dispute.

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: May 21, 2014

Residential Tenancy Branch

