



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNDC, FF*

Introduction

This hearing dealt with an application by the tenant, pursuant to the *Manufactured Home Park Tenancy Act*, for a monetary order for compensation for stress and anxiety experienced during the tenancy

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The landlord acknowledged receipt of evidence submitted by the tenant and stated that he had filed evidence at the Residential Tenancy Branch Office but had not provided the tenant with a copy of his evidence. Since the tenant was not provided with the landlord's documentary evidence, the landlord's evidence was not used in the making of this decision.

Issues to be decided

Is the tenant entitled to compensation?

Background and Evidence

The tenancy started on December 04, 2009. The tenant owned the mobile home and paid pad rent in the amount of \$290.00 on the first of each month. The tenant referred to a prior hearing that took place on March 04, 2014, to resolve a dispute between these two parties. The tenant had applied to cancel a notice to end tenancy for nonpayment of rent and during that hearing the parties came to an agreement. The terms of the agreement were outlined in a decision dated March 04, 2014. The tenant filed a copy of this decision into evidence.

According to the terms of that agreement, the tenant was required to catch up on unpaid rent by paying an additional \$145.00 per month, until the rent arrears were covered and the landlord agreed to legalize the pad by moving the pad over to ensure that there was adequate space between the tenant's trailer and the neighbouring trailers, as required by the local City by laws.

Both parties stated that the other had not complied with the terms of the agreement. The landlord stated that the tenant had not paid rent as agreed to and was still in arrears. The tenant stated that the landlord had not legalized the mobile home pad as promised.

The landlord further explained that in the recent past, the mobile home park had faced two problems with compliance with the City bylaws. The first problem was regarding the purchase of permits to install trailers in the park. The initial installation of the mobile homes was contracted out to a professional company by the name of CMH. The landlord was unaware that CMH had installed the mobile homes in the park without acquiring permits to do so.

When the tenant made a complaint to the City in 2012, it came to light that CMH had failed to comply with the City by laws and had installed multiple mobile homes in the park without obtaining permits. The City banned CMH from doing any further work in the mobile home park. The landlord was notified by the City and he purchased the required permits.

Later, the landlord faced a second problem when he was notified by the City that the placement of the mobile homes was not in compliance with City bylaws, with regard to the mandatory space required to be present between trailers. Accordingly, the landlord was required to move the tenant's trailer over to fulfill the space requirement.

The landlord testified that since CMH was banned by the City from working inside the mobile home park, he was forced to contact the only other company in the area by the name of EH, that carried out work involving mobile homes. Shortly after the hearing on March 04, 2014, the landlord requested EH to move the trailer.

The landlord stated that despite agreeing to pay EH, \$15,000.00 to move the tenant's trailer and despite two requests, EH informed the landlord that they were very busy and would do it as soon as they had an opening. The landlord stated that he did not purchase a permit from the City to move the trailer but intended to do so, once he had a firm date from EH.

In December 2014 the tenant decided to move out and informed the landlord that she would move out by January 31, 2015. The tenant also informed the landlord that she had sold the mobile home to EH. The landlord stated that the tenant owed \$4,665.00 in unpaid rent and that even though the tenant has moved out of the mobile home, the home still continues to occupy the rental pad and rent is not being paid to the landlord.

The tenant stated that because the trailer was not installed legally, she encountered several problems which caused damage to the window, bath tub and flooring of the trailer. The tenant provided a quotation in the amount of \$2,800.00 to repair these items, but agreed that she had sold the trailer to EH without carrying out any repairs. The tenant also added that she was not claiming the cost of repairs, but was claiming compensation for stress and anxiety that she suffered during the tenancy, due to the various problems caused by the illegal placement of the trailer.

The tenant made this application for compensation in the amount of \$2,500.00 on December 23, 2014 and moved out on January 21, 2015.

Attempts were made to assist the parties to come to an agreement. The tenant offered to withdraw her claim for compensation if the landlord agreed to waive all rent owed by the tenant. The landlord offered to deduct \$2,500.00 from the amount of rent owed if the tenant paid the balance of \$2,100.00, immediately. The tenant rejected the offer and stated that she did not agree with the landlord's calculation of outstanding rent.

Analysis

The tenant has made a claim for compensation for stress and anxiety caused by the problems that were associated with the placement of the trailer that did not comply with the City Bylaws. The tenancy started in December 2009 and for the entire term of five years of the tenancy the trailer was not moved and continued to occupy a space that did not comply with the spacing requirement of the City. During the tenancy, the tenant did not make any claims against the landlord for problems associated with the placement of the mobile home.

Based on the testimony of both parties, I find that the landlord acted immediately when he was notified of the problem by the City sometime in 2012. The landlord purchased the required permits and made efforts to hire a contractor to move the trailer so that it was in compliance with the City by laws.

During the tenancy, the tenant had made application for dispute resolution and the case was heard on March 04, 2014. The tenant's application was primarily to cancel a notice to end tenancy for nonpayment of rent. The tenant did not claim compensation for stress and anxiety during that hearing.

Based on the above, I find that the tenant has not proven a claim for compensation based on the placement of the trailer. I further find that even if I accept that the tenant had problems due to the placement of the trailer, I find that the tenant did not take steps to apply for an order directing the landlord to rectify the problem.

Black's Law Dictionary defines the "doctrine of laches" in part, as follows:

[The doctrine] is based upon maxim that equity aids the vigilant and not those who slumber on their rights.

...neglect to assert a right or claim which, taken together with lapse of time and other circumstances causing prejudice to adverse party, operates as bar in court of equity.

Based on the testimony of both parties, I find that by not applying for compensation during the tenancy, the tenant took no steps to seek a solution to the problem. I also find that the tenant is now making a monetary claim for compensation after the tenancy has ended which I find on a balance of probabilities that it is more likely than not that the tenant is acting in anticipation of an application by the landlord for outstanding rent.

In regard to the tenant's monetary claim, I have reviewed the submissions of both parties and I have formed the opinion that the last months of the tenancy were stressful on both parties for different reasons. Other than the understandable angst and stress which accompanies a state of disagreement and uncertainty, the tenant did not provide compelling evidence to support her claim of compensation for stress and anxiety. I therefore dismiss the tenant's application and claim in its entirety.

Based on the above, I find that the tenant has not proven her case and accordingly, she must bear the cost of filing this application.

Conclusion

The tenant's application is dismissed in its entirety.

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: February 26, 2015

Residential Tenancy Branch