



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant for return of a security deposit or for monetary compensation for damage or loss, and to recover the filing fee for this Application which was made under the *Manufactured Home Park Tenancy Act* (the “Act”).

Only the Tenant appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant testified that he sent the Notice of Hearing and a copy of his Application and evidence to the Landlord by registered mail, sent on August 26, 2014. In evidence the Tenant provided a copy of the registered mail receipt and a copy of the returned envelope, stamped by the Post Office indicating the mail had gone unclaimed by the Landlord. Under section 83 of the Act, the Landlord is deemed to have been served five days after mailing. Therefore, I find the Landlord has been duly served under the Act. I note that failure or neglect to accept registered mail is not a ground for Review under the Act.

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.

Issue(s) to be Decided

Is the Tenant entitled to monetary compensation from the Landlord?

Background and Evidence

On or about November 1, 2013, the Tenant rented a site from the Landlord on which to park his trailer. The monthly rent was \$400.00

The Landlord required the Tenant to pay the first and last month of rent and the Tenant paid the Landlord \$800.00. In evidence the Tenant provided a copy of a cheque dated

November 1, 2013, marked, "first and last month rent". The cheque is stamped by the bank indicating that it cleared into the Landlord's account.

The Tenant submits that he and the Landlord discussed that he might also rent a small cabin that was on the property of the Landlord's park. This plan did not come to fruition. The Tenant testified that there were other problems at the park and he decided to vacate his rental site.

On April 30, 2014, the Tenant gave the Landlord his written notice that he was moving at the end of May. In evidence the Tenant provided a copy of this letter. The Tenant testified that the Landlord then told him that he would have to pay rent for May. The Tenant reminded the Landlord that he had paid first and last months' rent at the start of the tenancy. The Landlord insisted the Tenant pay him the rent for May or he would have the Tenant's trailer removed from the property. According to the Tenant the Landlord also told him that the extra \$400.00 was for a security deposit.

The Tenant testified that he obtained some advice from the branch and later that day when he attempted to discuss the matter further with the Landlord, the Landlord became hostile and began shouting at him. The Tenant testified that the Landlord told him the, "landlord tenant act" did not apply to his business. According to the Tenant, the Landlord was of the position that the Innkeepers Act applied to his park.

The Tenant went to the police to explain his situation. The police attended the park to discuss the matter with the Landlord. According to the Tenant, the Landlord began to shout and accused the Tenant of lying to the police. Apparently the Landlord shouted over the Tenant to the point he was unable to speak to the police. According to the Tenant the police left after the Landlord informed them he would get the necessary paperwork to provide the Tenant with a notice to vacate.

The Tenant testified he was concerned about the hostile behaviour of the Landlord and decided to pay him the rent for the last month, May of 2014, as the Tenant was concerned for his safety and for the safety of his property.

The Tenant vacated the rental site on May 27, 2014, and in evidence provided a copy of the receipt for towing his trailer that day.

The Tenant wrote to the Landlord several times requesting a refund of his \$400.00, and included in evidence are copies of the demand letters sent to the Landlord and a second registered mail receipt and returned envelope marked "unclaimed".

Analysis

In a claim for damage or loss under the Act or tenancy agreement, the Applicant making the claim, here the Tenant must provide evidence sufficient to prove:

1. That the damage or loss exists;
2. That the damage or loss occurred due to the action or neglect of the respondent in breach of the Act or tenancy agreement;
3. Verification that the amount claimed for the damage or loss is the actual amount required for compensation; and
4. That the Applicant mitigated, or minimized, the loss or damage in accordance with section 7 of the Act.

Based on the above, the evidence and testimony, and on a balance of probabilities, I find that the Tenant is entitled to monetary compensation from the Landlord, for the following reasons.

I find the Landlord has breached the Act by either accepting a security deposit from the Tenant or by charging the Tenant double the rent for one month of the tenancy.

I find the Tenant has proven the Landlord has received an extra \$400.00 payment from the Tenant and has refused or neglected to return this amount to the Tenant. I find the Tenant mitigated his loss by warning the Landlord that he would take legal action by claiming against the Landlord if the Landlord refused to repay him the amount owed.

Under section 17 of the Act, the Landlord of a manufactured home park is prohibited from requiring or accepting a security deposit in respect of the tenancy. Section 17(3) sets out that if a landlord does accept a security deposit from a tenant the tenant may deduct that amount from rent or otherwise recover the amount. This recovery occurs through an application such as the Tenant has made here.

In the alternative, if the Landlord is not characterising the extra \$400.00 paid by the Tenant as a security deposit, then the Landlord has accepted double the rent for one month of the tenancy, as the Tenant paid for the last month of rent in advance.

Under section 55 of the Act, I find the Landlord had no right to charge the Tenant twice for one month of rent. I further find this would be an unjust enrichment for the Landlord, as the Landlord is only entitled to payment of \$400.00 for one month of rent from the Tenant and the Tenant has paid the Landlord \$800.00 for the month of May 2014.

I also note that section 5 of the Act prohibits the Landlord from avoiding the legislation regulating such tenancies.

For these reasons, I find that the Tenant has established a total monetary claim of **\$450.00** comprised of \$400.00 as described above and the \$50.00 fee paid by the Tenant for this application.

I grant the Tenant an order under section 60 for the balance due of **\$450.00**. This order must be served on the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenant has established a monetary claim of \$450.00 due from the Landlord. The Landlord has breached the Act as described above and must compensate the Tenant accordingly.

The Tenant is granted a monetary order which must be served on the Landlord and may be enforced in the Provincial Court.

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 *Manufactured Home Park Tenancy Act*.

Dated: March 25, 2015

Residential Tenancy Branch

