



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order. Despite having been served with the application for dispute resolution and notice of hearing sent via registered mail on October 17, 2014, the tenant did not participate in the conference call hearing. I was satisfied that the tenant had been properly served in accordance with section 89 of the Act and the hearing proceeded in her absence.

At the hearing, the landlord's counsel advised that the matter at issue has already been adjudicated by a judge of the Provincial Court and that an order was issued by the Court, but when the order was reviewed by the judge presiding at a payment hearing, that judge found that the court had acted outside its jurisdiction and directed the landlord to pursue the issue through the Residential Tenancy Branch.

It is a fundamental tenet of law, known as the doctrine of *res judicata*, that matters can only be adjudicated once. However, I find that the doctrine can only operate to bar further adjudication if the previous adjudication took place in a court of competent jurisdiction.

Section 58(3) of the *Residential Tenancy Act* (the "Act") provides as follows:

58(3) Except as provided in subsection (4) a court, does not have and must not exercise any jurisdiction in respect of a matter that must be submitted for determination by the director under this Act.

I note that section 58(4) of the Act refers to the Supreme Court rather than the Provincial Court and would therefore not give jurisdiction to the Provincial Court.

I find that because the Residential Tenancy Branch has exclusive jurisdiction to address tenancy issues for claims under \$25,000.00, the Provincial Court did not have jurisdiction to issue the previous decision and order and therefore the decision and order are a nullity. While the landlord's counsel advised that those documents have not been set aside by the Court, he assured me that he would not try to enforce that order.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The landlord's undisputed testimony is as follows. The tenancy began on September 1, 2011 and ended in February 2013. Rent was set at \$950.00 per month. The rental unit is a manufactured home owned by the landlord.

The tenant did not pay rent in the months of October – December inclusive and the landlord seeks to recover \$2,850.00 in rental arrears for that period.

At the end of the tenancy, the tenant did not clean the unit and left a behind both inside and outside the unit her belongings and refuse which had to be discarded. The landlord provided an invoice showing that she paid a labourer \$200.00 to “cut & weed front yard & back yard ... dispose of waste ... clean up under stairs & remove all garage [sic]” and she seeks to recover this expense.

The landlord testified that she personally spent 20 hours cleaning the unit. She testified that the tenant had smoked in the rental unit leaving a heavy odour and stains throughout and that the entire home required extensive cleaning. She seeks recovery of the value of her labour at a rate of \$25.00 per hour for a total of \$500.00.

The landlord provided an invoice showing that she paid \$450.00 to a third party to remove discarded items from the interior of the unit and perform cleaning and various repairs, including removing and cleaning windows and screens, cleaning window frames, spackling holes in walls, removing and cleaning light fixtures, removing switch and outlet covers and cleaning and replacing broken plug receptacles. The landlord seeks to recover this cost.

The landlord testified that the tenant allowed the oil tank to run dry, which caused sediment to interfere with the tank and oil line. The landlord seeks to recover \$250.00 as the cost of flushing the oil tank, cleaning and bleeding the line and replacing the burner nozzle.

The landlord seeks to recover the cost of repainting the unit. She testified that the tenant left numerous holes in the walls from where she had hung pictures, she kept rabbits in the rental unit and where their cages were against the walls were marks, urine stains and mold and the walls were heavily stained with smoke. She testified that the

unit had last been painted approximately 1 year before the tenancy began. The landlord provided an invoice showing that she paid \$750.00 to paint the unit.

The landlord's claim totals \$5,000.00 and she seeks to recover the \$100.00 filing fee paid to bring her application. The Residential Tenancy Branch charges \$50.00 for claims of \$5,000.00 and less and the landlord could not explain why her filing fee was \$100.00 rather than \$50.00.

Analysis

I accept the landlord's undisputed testimony. The Act establishes the following test which must be met in order for a party to succeed in a monetary claim.

1. Proof that the respondent failed to comply with the Act, Regulations or tenancy agreement;
2. Proof that the applicant suffered a compensable loss as a result of the respondent's action or inaction;
3. Proof of the value of that loss; and (if applicable)
4. Proof that the applicant took reasonable steps to minimize the loss.

I find that the tenant was contractually obligated to pay \$950.00 per month in rent and I find that she failed to meet that obligation in the months of October, November and December 2011, causing the landlord to lose income for those months. The landlord acted to evict the tenant and I find those actions to be reasonable to mitigate her losses. I find that the landlord has proven entitlement to the rental arrears and I award her \$2,850.00.

Sections 23 and 35 of the Act require landlords to perform an inspection of a rental unit together with the tenant at both the beginning and the end of the tenancy. The landlord testified that she believes an inspection was performed at the beginning of the tenancy but did not know where she might have a record of that inspection and stated that no inspection was performed at the end of the tenancy. These records are helpful to landlords in presenting a claim for damages as they provide a clear comparison of the unit's condition at the beginning and end of the tenancy. Not only did the landlord fail to complete or provide this documentation, but she also did not enter into evidence photographs showing the condition of the unit although she stated that she had such photographs available.

Section 37(2)(a) of the Act requires tenants at the end of a tenancy to leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. I find that the tenant failed to meet this obligation as she did not complete yard maintenance prior

to vacating and she left garbage and discarded items outside. I find that this breach caused the landlord to incur costs of \$200.00 for cleanup and I find that the landlord is entitled to recover that amount. I award the landlord \$200.00.

The landlord claimed that it took her 20 hours to clean the mobile home and she also paid a third party to remove windows, switchplate covers and light fixtures for cleaning which means that much more than 20 hours were spent cleaning the unit. The time expended cleaning suggests to me that the landlord's standard of cleanliness is higher than the standard set by the Act, which is "reasonably clean". Without evidence such as a condition inspection report or photographs, it is not possible to determine how close to reasonably clean the unit was at the end of the tenancy. I accept that the tenant did not clean the rental unit when she vacated and I accept that smoking inside the rental unit during the tenancy would have caused a nicotine film to accumulate inside the unit which would have required work to clean. In the absence of evidence showing the condition of the unit, I find that the landlord has only proven that the tenant breached her obligation to leave the rental unit reasonably clean with respect to leaving a nicotine residue throughout the unit and garbage and discarded items in the unit which had to be removed. I therefore find that the landlord is entitled to \$150.00 for the cost of removing and disposing of items and 4 hours of cleaning at a rate of \$25.00 per hour. I award the landlord \$150.00 and \$100.00 respectively for these claims.

I find that the tenant was obligated to leave the oil tank undamaged and I find that when she ran the tank dry, she damaged it which necessitated repairs. I find that the landlord is entitled to recover the \$250.00 paid for repairs and I award her that sum.

I accept that the walls of the rental unit were stained and had strong odours from smoke and from urine from the rabbits. I find that painting was required. Residential Tenancy Policy Guideline #40 provides the useful life of building elements and identifies the useful life of interior paint as 4 years. By the time the landlord repainted the unit, the paint had expended half of its useful life. I find that the landlord is entitled to recover from the tenant one half of the cost of painting and I award her \$375.00.

As the landlord has been substantially successful in her claim, I find she is entitled to recover the filing fee paid to file her application. However, it appears that ServiceBC overcharged the landlord by \$50.00 as they charged her \$100.00 when the charge should have been \$50.00. I find that the tenant should not have to bear the result of that error as the tenant has no means by which to reclaim the overpayment. I award the landlord \$50.00.

In summary, the landlord has been successful as follows:

Rental arrears	\$2,850.00
Yard cleanup	\$ 200.00
Cleaning	\$ 100.00
Repairs and garbage removal	\$ 150.00
Furnace repairs	\$ 200.00
Painting	\$ 375.00
Filing fee	\$ 50.00
Total:	\$3,925.00

I grant the landlord a monetary order under section 67 for \$3,925.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary order for \$3,925.00.

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 28, 2015

Residential Tenancy Branch

