



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vista Village Trailer Park Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC; OLC

Introduction

This Hearing was convened on May 6, 2015. It was originally scheduled to consider cross applications; however, I severed the Landlords' Application for Dispute Resolution and adjourned both matters to be heard separately. An Interim Decision was issued on May 15, 2015, which should be read in conjunction with this Decision.

This is the reconvened Hearing for the Tenant's Application for Dispute Resolution seeking compensation for damage or loss under the Act, regulation or tenancy agreement; and an Order that the Landlord comply with the Act, regulation or tenancy agreement.

Issues to be Decided

1. Is the Tenant entitled to a monetary award for aggravated damages in the amount of \$14,000.00 for harassment, pain and suffering, grief, humiliation, loss of self-confidence and mental distress?
2. Is the Tenant entitled to a monetary award in the amount of \$306.00 for overpayment of rent?
3. Should the Landlord be ordered to comply with Section 22 of the Act?

Background and Evidence

This tenancy began in 2000. In 2006, further to a Court Order, the Landlord's agent took over management of the manufactured home park (the "Park"). This tenancy has been the subject of numerous Applications for Dispute Resolution, filed by both parties.

The Tenant's evidence:

The Tenant stated that the Landlord has attempted to wrongfully evict her three times since the Landlord's agent took over management of the Park. She stated that in each case, the Notices to End Tenancy have been found to be invalid. The Tenant stated that the Landlord went as far as to attempt to enforce an Order of Possession, which had also been found to be invalid. The Tenant testified that the arbitrator at a previous hearing on January 19 and 23, 2015 (the "previous hearing"), suggested that the Tenant might have been entitled to aggravated damages, but that since she did not apply for them he could not award them.

The Tenant testified that the Landlord's agent also charges late fees for rent which is paid on time but deposited late by the Landlord's agent. She stated that she has to mail her rent by money order because the Landlord's agent will not allow the Tenant to pay her rent to the on-site manager. The Tenant testified that she mails the rent a week or two before it is due so that the Landlord receives it on time.

The Tenant stated that she has disabilities, and that the stress caused by the Landlord's agent's harassment is taking a toll on her emotional and physical health. The Tenant provided a medical certificate in evidence.

On June 20, 2014, the Tenant paid July's rent by money order, sent by registered mail. The money order was apparently lost in the mail (the "lost money order") and therefore the Tenant gave the Landlord another money order to replace it. The Tenant stated that the lost money order for July 2014's rent was cashed by the Landlord on February 4, 2015, at the same time as the Landlord cashed the Tenant's rent payment for February, 2015. Therefore, the Tenant effectively has overpaid rent. She seeks to recover the overpayment.

The Tenant stated that when she discovered that the Landlord's agent had cashed the lost money order, the Tenant called the post office and was advised by a postal employee that the Landlord's agent must have had the lost money order in her possession all along.

The Tenant provided 105 pages of documents in evidence, including:

- a copy of the Landlord's tenant ledger;
- copies of correspondence from the Landlord's agent, the bank, the post office, and the Tenant's advocate; and
- copies of previous Decisions regarding this tenancy.

Landlord's evidence:

The Landlord's agent stated that the lost money order was cashed in error. She stated that the lost money order "appeared at the office in January", when she was out of town. She stated that she assumed that her bookkeeper had deposited the rent cheques on February 1, 2015, but discovered that she hadn't, so the Landlord's agent deposited all of the rent cheques for the Park on February 4, 2015.

The Landlord's agent stated that she didn't realize that she had cashed the lost money order as well as the Tenant's February rent payment. She testified that she did not look closely at the deposit. She testified that she immediately offered to reimburse the Tenant when the mistake was discovered, but the Tenant did not respond.

The Landlord's agent stated that she believed the bank had cancelled the lost money order, or at the least that it would be stale dated. The Landlord's agent stated that the Tenant should have gone to the bank and it would be "reversed immediately".

The Landlord's agent stated that she contacted the post office in May, 2015, and was told that the lost money order was found and delivered to the Landlord's office, and signed for, on January 19, 2015.

The Landlord's counsel submitted that the issues which took place prior to January, 2015, were determined at the previous hearing and therefore the Tenant's claim for aggravated damages is *res judicata*.

The Landlord's counsel submitted that there was insufficient evidence that the money order was received, then held, then cashed, to purposefully cause the Tenant distress.

The Tenant gave the following response:

The Tenant testified that the Landlord's agent continues to deposit her rent late. She stated that she is concerned that the Landlord will use late payment of rent as an excuse to evict her.

The Tenant stated that her stress was compounded by the Landlord cashing the lost money order, continuing to insist that she is late paying rent, and charging her late fees which are baseless.

Analysis

There is no dispute that the Tenant has overpaid rent in the amount of \$306.00. Therefore, the Tenant's application for a monetary award for overpayment of rent in the amount of **\$306.00** is granted.

The Landlord provided the Tenant's ledger as at January 6, 2015, which indicates, in part:

Type	Date	Num	P.O. #	Amount	Balance	Date of cheque
Invoice	07/01/2014	6655		\$306.00	\$306.00	
Invoice	07/15/2014	6857	Late-July 2014	\$25.00	\$331.00	
Payment	07/22/2014		For August	-\$306.00	\$25.00	
Invoice	08/01/2014	6723		\$306.00	\$331.00	
Invoice	08/31/2014	6845	Late-Aug 2014	\$25.00	\$356.00	
Invoice	09/01/2014	6791		\$306.00	\$662.00	
Payment	09/02/2014		For September	-\$306.00	\$356.00	
Invoice	09/05/2014	6932	Late-Sep 2014	25.00	\$381.00	
Payment	09/26/2014			-\$306.00	\$75.00	9/19/14
Payment	09/26/2014			-\$331.00	-\$256.00	9/19/14
Invoice	10/01/2014	6881		\$306.00	\$50.00	
Invoice	10/07/2014	6931	Late-Oct 2014	\$25.00	\$75.00	
Payment	10/28/2014			-\$306.00	-\$231.00	10/21/14
Invoice	11/01/2014	6959		\$306.00	\$75.00	
Invoice	11/07/2014	7075	Late-Nov 2014	\$25.00	\$100.00	

Invoice	12/01/2014	7023		\$306.00	\$406.00	
Payment	12/01/2014			-\$306.00	\$100.00	11/17/14
Payment	12/18/2014			-\$324.00	-\$224.00	12/12/14
Invoice	01/01/2015	7105		\$314.00	\$90.00	Amount owing is late fees

A copy of a Decision issued September 24, 2014, was provided in evidence, in which the Arbitrator made the following finding:

"I find the tenant failed to pay rent pursuant to Section 20 for the month of July 2014. However, I also find that since the landlord will not allow the onsite manager to collect rent payments the tenant had no alternative but to use Canada Post and that it was the fault of Canada Post that the payment for July was not received by the landlord by July 1, 2014."

I accept that the Tenant was in the habit of mailing rent to the Landlord in advance of its due date. I find that the Tenant was not at fault for the lost money order for July's rent and therefore was not late. I accept that the Tenant mailed the money order in time for the Landlord to receive it by July 1, 2014, and therefore the Tenant was not "late". The Landlord charged late fees for July, and then applied subsequent rent payments towards the previous balance (including the July late fee). Since I have found the Tenant was not late paying rent in July, 2014, it follows that the balance of the "late" fees are not valid.

For the above reasons, **I find that the Tenant owes no late fees and that the Tenant has not been late paying rent up to and including July 1, 2015.** I also find that the Landlord, in charging late fees, contravened Section 22 of the Act (Tenant's right to quiet enjoyment). The Landlord was provided with the Decision dated September 24, 2014, and was aware that the Tenant was found to be not to be at fault for the lost money order. Manufactured Home Park Tenancy Regulation 5 allows for an administration fee of not more than \$25.00 for the return of a tenant's cheque or for late payment of rent, only if the tenancy agreement allows for that fee. In this case, the tenancy agreement allows for NSF fees in the amount of \$25.00, but there is no provision for late fees.

The ledger indicates that the Tenant paid \$25.00 of the "late" fees on September 26, 2014, and \$10.00 of the "late" fees on December 18, 2014. Therefore, I find that the Tenant is entitled to return of **\$35.00** for "late" fees paid in error.

The Tenant seeks compensation in the amount of \$14,000.00 for aggravated damages. Residential Tenancy Policy Guideline #16 provides, in part:

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.

The Tenant stated that the Landlord's act of cashing the lost money order contributed substantially to her stress and existing medical issues. The Tenant provided a Medical Certificate, dated March 3, 2015, which provides:

"This note is to confirm that [the Tenant] has attended my office today for review of his/her medical condition.

[The Tenant] is suffering from [two medical conditions].

Shouldn't be exposed to a lot of stress, it can cause flare up of the disease."

In this case, I find that there is insufficient evidence, on the balance of probabilities, that the Landlord received the lost money order, held it, and then knowingly and deliberately cashed the lost money order in February, 2015. I also accept the Landlord's evidence that efforts were made in a timely fashion to reimburse the Tenant for the overpayment of rent. This Tenant's claim for aggravated damages is **dismissed**.

A copy of a Decision issued January 30, 2015, was provided in evidence. The Arbitrator found that the Landlord had breached the Tenant's covenant of quiet enjoyment and awarded the Tenant \$1,000.00. Although the Tenant has not provided sufficient evidence to prove a claim for aggravated damages at this time, the Landlord is warned that any further invalid late fees charged to the Tenant or invalid Notices to End Tenancy issued to the Tenant may provide sufficient cause for the Tenant to file another Application for aggravated damages. **The Landlord is ordered to comply with Section 22 of the Act.**

The Tenant has been partially successful in her Application and I find that she is entitled to recover a portion of the filing fee, in the amount of **\$50.00**.

The Tenant has established a monetary award, calculated as follows:

Overpayment of rent	\$306.00
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Return of invalid "late" fees	\$35.00
Partial recovery of the filing fee	<u>\$50.00</u>
TOTAL	\$396.00

Conclusion

The Tenant may **either** deduct **\$396.00** from future rent due to the Landlord, **or** serve the Landlord with the enclosed Monetary Order, which may be filed in the Provincial Court of British Columbia (Small Claims Court) and enforced as an Order of that Court.

The Landlord is ordered to comply with Section 22 of the Act (Tenant's right to quiet enjoyment).

I find that the Tenant owes no late fees and that the Tenant has not been late paying rent up to and including July 1, 2015.

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 17, 2015

Residential Tenancy Branch

