



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Manufactured Home Park Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 60;
2. A Monetary Order for damages to the unit - Section 60;
3. A Monetary Order for compensation – Section 60; and
4. An Order to recover the filing fee for this application - Section 65.

The Landlords and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Landlord states that he did not receive the Tenant’s evidence package and no notice of registered mail was received. The Tenant states that she sent the package to the Landlord by registered mail on July 20, 2015. The Tenant provided a tracking number starting with the letters PG and ending with the letters CA. Tracking information from that number indicates that on July 23, 2015 the mail was refused.

Rule 3.15 of the RTB Rules of Procedure provide that a respondent’s evidence must be received no less than 7 days before the hearing. Given the tracking information I find on a balance of probabilities that the Tenant fulfilled its obligations to send a copy of the evidence to the Landlord within the time required. Accepting further that the Landlord refused to accept this evidence I find that the Landlord created its own prejudice, if any,

in the consideration of this evidence. I find therefore that I may consider the Tenant's evidence package.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started on September 28, 2011 and the Tenant moved out of the trailer in July 2013. On November 5, 2013 the trailer was damaged by fire making it uninhabitable. Rent of \$200.00 was payable monthly.

The Tenant states that the fire was due to arson and that a police investigation is continuing. The Tenant states that at the time of the arson she was living in another trailer on the park. The Tenant states that she has no insurance. The Tenant states that in early spring of 2014 she applied for crime scene cleanup compensation from a victim program in the amount of \$2,500.00 but has not yet received a determination.

The Landlord states that the damaged remains of the trailer were left on the pad until the end of April 2014 and that no rent was paid for November, December 2013 and January, February, March and April 2014. The Landlord states that a prospective renter was obtained for the pad for as soon as the trailer was gone. The Landlord states that there are 55 pads and that 20 of those pads are open. The Landlord states that of the open pads not all are useable. The Landlord claims lost rental income or unpaid rent of \$1,200.00.

The Tenant argues that as a result of arson the tenancy was frustrated and no rent was payable. The Tenant states that at the time of the fire the Landlord had 4 new lots with hook up ready and that the Landlord is not entitled to lost rental income as the Landlord did not lose any rental income.

The Landlord states that for health and safety reasons the lot had to be cleaned, that it took the Landlord 1.5 days, and that it was completed on April 25, 2014. The Landlord states that nails and wood had been left around and that although there were no children living in the area, they were up the road. The Landlord states that the area was not fenced off as the Landlord expected it to be cleaned as soon as the snow was gone. The Landlord states that it was not done then by the Tenant as the Tenant had no money and no means to complete the job.

The Landlord claims as follows:

- \$245.00 for labour, invoice attached for \$800.00;
- \$175.00 for labour, invoice for \$853.00 that includes a manager fee and a handwritten note indicates an amount of 200.00 for site clean-up;
- \$2,075.00 for garbage removal;
- \$673.31 and \$1,500.00 for machine and trucking costs to bring Landlord's own machine to the park;
- \$175.00 + 175.00 + 100.00 for additional labour, receipts issued to the Landlord for a third party's labour and for job solely specifying cleanup of the site provided; and
- \$945.00 for operation of the excavator by the Landlord. The Landlord states that his invoice is reduced from the regular hourly charges to other persons and that it took 7.5 hours for the labour.

The Landlord states that he obtained 3 estimates for the job of costs between \$5,500.00 and \$8,000.00. The Landlord states that he used his own labour and machinery to reduce the costs. No documentary evidence of these estimates was provided.

The Tenant states that the Landlord's loader on site would have been sufficient to use instead of the excavator as the largest part of the clean-up had already occurred. The Tenant states that the Landlord also created more damage when the trailer was tipped

and that the Landlord brought this machine to the site in order to save his own costs to move it for his own business purposes.

The Tenant states that the trailer was disassembled by the Tenant down to the floor level by the end of November 2014 and that work was stopped until the spring with the agreement of the Landlord. The Tenant states that she received an estimate for less to do the job and provided an estimate of \$1,250.00 for the rental of an excavator and labour for 10 hours. The Tenant states that she was going to do the cleanup as agreed in the spring. The Tenant states that after November 2013 the Landlord never asked her to finish the job and never informed the Tenant that the job was being finished by the Landlord. The Tenant states that the Landlord was asked to stop the work as the Tenant had already lined up her contractor.

The Landlord states that it would be impossible to do the job on the amount quoted by the Tenant. The Landlord states that while the loader could be used to tear down the trailer walls the loader was too light to pick up the bottom.

The Landlord states that the damage under the trailer was caused by leaving the trailer open with no power. The Landlord states that as a result the water line was leaking and the electrical was in a ball of ice. Further the Landlord states that the sewer and electrical hook-ups were damaged in the process of the clean-up when the trailer fell on the electrical server outlet. The Landlord states that the sewer damage has been fixed and that the remaining damages will be repaired. The Landlord claims \$700.00 and states that an estimated \$500.00 of this amount is based on previous experience and \$200.00 on labour and miscellaneous materials.

The Tenant states that all the utilities were turned off and that there was no water damage under the trailer. The Tenant states that solid wood flooring was under the trailer and that the flooring was still good. The Tenant refers to the photos provided as evidence to show that the plastic under the trailer was not melted.

The Tenant states that the Landlord agreed that the Tenant would have 1.5 lots as everyone did. The Tenant states that the curb stops were all very old and when turned on could not be turned off without leaking. The Tenant states that the Tenant bought heat tape, used hydro to maintain and put rocks around the pond.

The Landlord states that work to the yard was done in the fall of 2012 as the yard was a mess with siding all over. The Landlord states that they tried to get the Tenant to clean up the yard and the Tenant agreed that the Landlord would help her out and repay the costs over time or when work was done. The Landlord states that the rough costs of \$700.00 were mentioned at the time. The Landlord states that the Landlord paid for siding, deck and stairs. The Landlord claims \$700.00 for these repairs.

The Tenant states that she bought the materials for the deck but could not get to the job. The Tenant states that there was no agreement, that the Landlord did the work on his own accord, and that the work that was done was shoddy.

Analysis

Section 20 of the Act provides that a tenant must pay rent when it is due under the tenancy agreement. Section 85 of the Act provides that the *Frustrated Contract Act* and the doctrine of frustration of contract apply to tenancy agreements. Residential Policy Guideline #34 provides as follows:

A contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract.

Based on the undisputed evidence that the trailer burned and was uninhabitable I find that the pad could not be used for the purpose intended and the tenancy agreement

was frustrated. As a result I find that the provision for the payment of rent ended and I dismiss the Landlord's claim for unpaid rent.

Section 30 states that when a tenant vacates a pad site at the end of the tenancy the tenant must leave the site reasonably clean, and undamaged except for reasonable wear and tear. Section 7 of the Act provides that if a tenant does not comply with this Act, the regulations or their tenancy agreement, the tenant must compensate the landlord for damage or loss that results. Further a party who claims compensation must do whatever is reasonable to minimize the damage or loss.

It is clear that the site was left unclean after the fire and that the Tenant did not ultimately clean up the site. Given the Landlord's evidence that they expected the site to be cleaned by spring, I find that the Landlord had agreed that the Tenant could wait until spring to carry out the clean-up. While the time to repair the site may have arrived, and although the Landlord did not inform the Tenant that the site was being cleaned, I note that there is no evidence that the Tenant communicated with the Landlord to inform him when to expect the site would be cleaned.

I accept that without being fenced off the site would present a hazard however I cannot see how the presence of snow makes it less a hazard. I accept the Tenant's evidence that an application was made to a victim program however there is no evidence of any expectation of response time and I find that this carries little bearing on the Tenant's obligation to clean the site. Given the Tenant's evidence of no insurance and a claim for clean-up costs, I accept the Landlord's evidence that the Tenant was without the resources at any time to cover the cost of clean-up. I find therefore that even had the Parties communicated, waiting longer into the spring or summer would not have changed the outcome. As a result I am satisfied that the Landlord has shown on a balance of probabilities that the Tenant breached the Act by not leaving the site reasonably clean and that the Landlord incurred costs to clean the site.

The total labour costs are thinly supported, in some cases, by invoices that have handwritten notes indicating an apparent arbitrary allocation. I also consider the undisputed evidence that some damages occurred during the clean-up by the Landlord. Given the Tenant's estimate for costs and considering that the Landlord provide no independent estimates for the costs, I find that the Landlord's overall costs for labour to be excessive. Given the receipts that directly note costs for cleaning and the invoice for the Landlord's own labour I find that the Landlord has substantiated the costs of **\$1,395.00** (\$175.00 + 175.00 + 100.00 + 945.00).

I consider the Tenant's persuasive evidence of benefit to the Landlord in bringing the excavator to be a benefit to the Landlord and I therefore find that the Landlord has not substantiated the costs for the transportation of the excavator and I dismiss the claims for \$673.31 and \$1,500.00. Give the clear invoice, I find that the Landlord has substantiated **\$2,075.00** for garbage removal.

It is undisputed evidence that damage occurred to the electrical and sewer during the clean-up by the Landlord. I found the Landlord's evidence of the work to be completed in the future to be vague and undetailed and there is no written estimate for the work from independent sources. As a result I find that the Landlord has not substantiated that the Tenant caused the all the damages being claimed and that where the Tenant may have caused damages, the particulars of the claim are insufficient to substantiate the amount claimed. I therefore dismiss the claim to \$700.00 for the repair the electrical and sewer.

Given the lack of anything other than rough costs being orally claimed and considering the Tenant's evidence that the materials were provided by the Tenant for the work on the deck, I find that the Landlord has failed to provide sufficient evidence to substantiate on a balance of probabilities the costs claimed. I therefore dismiss the claims for costs for work done last year.

I do not find the Landlord's evidence of a prospective renter for the pad to be persuasive or credible considering the evidence of available pads. As a result I find that the Landlord has not shown that a rental loss occurred and I dismiss this claim.

As the Landlord has been only partially successful I find that the Landlord is only entitled to recovery of half the \$100.00 filing fee in the amount of **\$50.00** for a total entitlement of **\$3,520.00**.

Conclusion

I grant the Landlord an order under Section 67 of the Act for **\$3,520.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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 28, 2015

Residential Tenancy Branch

