



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding King George Enterprises Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP, RR, MNDC, MNR, FF

Introduction

This hearing dealt with two related applications. One was the tenant's application for a repair order; an order reducing the rent for repairs, services or facilities agreed upon but not provided; and a monetary order. The other was the landlord's application for a monetary order for unpaid rent only; the landlord was not seeking to end the tenancy. Both parties appeared and gave affirmed testimony.

The tenant had filed written evidence including copies of receipts and a letter from a witness. They had not provided copies to the landlord even though all the written material they received from the Residential Tenancy Branch in advance of the hearing states that all evidence must be served on the other side of a dispute. For this reason the tenant's evidence was excluded and was not considered by me in rendering this decision.

Issue(s) to be Decided

- Should a repair order be made and, if so, on what terms?
- Is the tenant entitled to a monetary order and, if so, in what amount?
- Is the landlord entitled to a monetary order and, if so, in what amount?

Background and Evidence

The tenants rent a manufactured home in a manufactured home park. The month-to-month tenancy commenced April 1, 2015. The park manager testified that the monthly rent is \$1000.00 and is due on the first day of the month.

The tenants testified that at first they had a rent-to-own agreement with the park owner. The agreement was that they would pay \$100.00 or \$200.00 each month in addition to the rent towards ownership of the manufactured home and that if they decided to withdraw from the purchase plan any money paid towards the purchase of the home would be refunded to them. At the end of their testimony it appeared they agreed that the monthly rent was \$1000.00.

If there is a written tenancy agreement, no one filed a copy of it.

The tenants testified that with two exceptions, they pay the rent in cash to the park owner, who always gives them a receipt for the payment. They did not pay much attention to the receipts- in particular, the dates on the receipts – until this dispute.

The tenants testified that they usually pay the rent in two installments; at least \$700.00 on pay day and the balance when they can.

The tenants testified that they paid \$900.00 for February; \$800.00 for March; \$900.00 for April; \$800.00 for May and nothing for June and that the receipts back up their testimony. The tenants testified that after they had paid \$300.00 toward the rent-to-own plan they changed their minds. When the park owner failed to return the \$300.00 they deducted it from the February and March rents.

The park manager testified that the tenants paid \$900.00 for February and nothing since. He testified that the day before the hearing he went through the park owner's receipt book and there are no receipts issued to the tenants for March, April, May or June.

The park manager testified that he kept asking the male tenant for copies of the receipts they said they had but the male tenant kept offering a variety of reasons as to why they could not supply them: his wife had them; they were at his son's; they had been filed with the Residential Tenancy Branch. The park manager testified that three days before the hearing he told the tenants they had to give him copies of what had been filed with the Residential Tenancy Branch but they failed to do so. In the hearing the tenants' position was that the landlord should have copies of its' own receipts.

The evidence is clear that on May 1, 2016 the tenants reported a problem with the electrical supply to their unit. The park manager and the male tenant looked at the box. They could see that one of the lines to the unit was blown. This reduced the electrical supply to the unit from 240 volts to 120 volts.

The park manager testified that he is qualified to do this particular repair and has done it several times in this park. His experience is that the time required to do this repair can vary from half an hour to a day and a half. He testified that until you start the project you do not know how long the repair will take. He did not want to start the repair until he had the parts on hand and enough time set aside to complete the job because once he started the unit would be entirely without power until it was completed. Also, this was a job he did not want to do in the rain. He said that timing was an issue for him as he is the manager and principal repair person for this 98 site park.

The repair was not actually done until May 31 and took less than an hour.

The tenants testified that during this month the hot water heater, the washer and dryer, the stove, and the space heater did not work. They had to take their laundry to a laundromat; eat out frequently; and shower elsewhere. In addition to being a very unpleasant month for them, it was also expensive.

Analysis

Repairs

There is no evidence that further repairs are required. If the tenants have information that the repair was improperly done or further repairs are required they may apply, with the proper supporting evidence, for an additional repair order.

Rent Reduction

This is a claim in contract by the tenants against the landlord. As explained in *Residential Tenancy Policy Guideline 16: Claims in Damages*:

“Where a landlord and tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party regardless of the circumstances. A tenant is expected to pay rent. A landlord is expected to provide the premises as agreed to. If the tenant does not pay all or part of the rent, the landlord is entitled to damages. If, on the other hand, the tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord. Compensation would be in the form of an abatement of rent or a monetary award for the portion of the premises or property affected.”

Section 65(1) allows an arbitrator who has found that a landlord has not complied with the Act, regulation or tenancy agreement to order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of the tenancy agreement.

Hot water, cooking facilities, laundry facilities and heat represent a significant proportion of the value of any tenancy. I find that the value of this tenancy was reduced by 60% for the month of May and I award the tenants a one time rent reduction in the amount of \$600.00.

Arrears of Rent

The tenants could have resolved this dispute by providing copies of the receipts they say they have to the park manager yet they have resisted doing so. The most peculiar part of the whole story is that days before the hearing the landlord was asking the tenants for copies of the documents they filed with the Residential Tenancy Branch and the tenants still refused to provide them.

One of the reasons why evidence is served on the other side in a dispute is to allow the opposing party to give evidence regarding the authenticity of the documents sought to be

admitted into evidence. By failing to provide the documentation they say they have the tenants have avoided this level of scrutiny.

I find the tenants' course of conduct very suspicious and for that reason I prefer the evidence of the landlord.

I find that the tenants owe arrears of rent for period February to June inclusive in the amount of \$4100.00.

Filing Fee

As the landlord was successful on its application it is entitled to reimbursement from the tenants of the \$100.00 fee it paid to file its' application. The tenants did not have to pay a fee to file their application.

Set Off

I have found that the tenants are entitled to payment from the landlord in the amount of \$600.00 and the landlord is entitled to payment from the tenants in the amount of \$4200.00. Setting the two amounts off against the other I award the landlord a monetary order in the sum of \$3600.00. Pursuant to section 67 I grant the landlord a monetary order in this amount

Conclusion

After setting off a monetary award in favour of the tenant against a monetary award in favour of the landlord a monetary order has been granted to the landlord. If necessary, this order may be filed in 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 *Residential Tenancy Act*.

Dated: June 22, 2016

Residential Tenancy Branch