Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNDC

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlord on July 8, 2016. The Landlord filed seeking a Monetary Order for: damage to the unit site or property; unpaid rent or utilities; and for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement.

The hearing was conducted via teleconference and was attended by the Landlord, both Tenants, and the Tenants' Advocate. Each person gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process; however, each declined and acknowledged that they understood how the conference would proceed.

The male Tenant confirmed receipt of the Landlord's application, notice of hearing documents and evidence. No issues or concerns were raised regarding receipt of those documents. As such I find the Tenant was duly served notice of this application and proceeding.

The female Tenant stated she chose not to pick up the registered mail package that was sent to her after it was created on July 8, 2016, because she did not know who sent it to her. Section 90(a) of the *Residential Tenancy Act* (the "Act") states that a document served by mail is deemed to have been received five days after it is mailed. A party cannot avoid service by failing or neglecting to pick up mail. Therefore, I conclude the Tenant was deemed served notice of this application and hearing, pursuant to section 90 of the *Act.*

After consideration of the above, I considered the Landlord's documents as evidence for these proceedings. The Tenants confirmed they did not submit documentary evidence in response to these matters.

Both parties were provided with the opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions. While I have considered all relevant oral and documentary submissions not all those submissions are listed in this Decision.

Issue(s) to be Decided

Has the Landlord met the burden to prove entitlement to $8,639.00 in monetary compensation?

Background and Evidence

I heard the Landlord submit the Tenants were occupying the manufactured home pad at the time the Landlord purchased the manufactured home park in December 2013. At that time the Tenants were required to pay rent of $215.40 on the first of each month.

In August 2014 the Landlord served the Tenants a 1 Year Notice to end tenancy listing an effective date of August 31, 2015. The Landlord stated that she now recognized the Tenants were entitled to compensation equal to one year's rent resulting from service of the notice to end tenancy. As a result she was reducing her claim $2,584.80 (12 x $215.40) for that compensation.

The Landlord submitted that her claim consisted of the following:

- $2,128.60 for use and occupancy of the manufactured home site (the Site) as the Tenants moved out, without written notice, abandoning their manufactured home (the Home) and possessions on the Site;
- $6,500.00 for the estimated cost to have the Home and the abandoned possessions professionally removed. I heard the Landlord state that the cost to have individual sites cleaned out varied and were dependant on the condition of the homes and sites at the time the articles were removed. The Landlord submitted the dumping fees have increased as the dumps in the two neighbouring communities are almost full. ; and
- $10.50 for the Canada post registered mail fees incurred for service of documents.

The Tenants disputed the Landlord's claims through submissions from the Advocate and each Tenant as summarized below:

- The Tenants moved out of the Home in October 2014, prior to the effective date of the Notice as they were worried they would not find a place to live if they waited until all of the other tenants moved out;
- The Tenants were entitled to monetary compensation equal to one year's rent; which they were never paid so the Tenants are not responsible to pay for use and occupancy of the Site;
- The Landlord did not suffer a loss of rental income after the Tenants vacated the Site as the Landlord gave Notice the park was closing. There was no evidence the Landlord attempted to re-rent the Tenant's Site;
- The Home has sat abandoned for over two years and has been damaged by natural effects and vandalism. The Tenants asserted the cleanup costs were higher now due to that vandalism and natural decay;

- There was evidence that the Landlord had been thrifty in reducing costs for other tenants; therefore, if the Landlord were to be granted a monetary award based on an estimate she may be able to profit from this situation;
- The Tenants were not aware that they would be liable for the Landlord's mailing costs.

Analysis

Section 55 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*. After careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

Section 7 of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

> 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
>
> 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The undisputed evidence was the Landlord served the Tenants a one year Notice in August 2014 and the Tenants moved out in October 2014 leaving their home and some possessions behind. Given the circumstances before me I accept the Landlord was entitled to consider the Tenants' Home and possessions to be abandoned, pursuant to 34(2)(b) of the Regulations; and that the tenancy had ended, pursuant to section 37(1)(d) of the *Act.*

There was insufficient evidence before me to prove the Landlord was entitled to compensation for use and occupancy of the Site up to August 31, 2015; the effective date of the Notice. Furthermore, there was insufficient evidence to prove the Landlord took steps to mitigate any loss of rent given her intention to close the Park. Rather, the claim for use and occupancy appears to be the Landlord's attempt to offset the statutory requirement which requires the Landlord to pay the Tenants compensation equal to one year's rent, which is not affected by a tenant ending the tenancy prior to the effective date of the Notice; pursuant to section 43(3) of the *Act.* As such, I dismiss the claim of $2,128.60 for use and occupancy, without leave to reapply.

I accept the Tenants' submissions that they owned the Home and possessions that they abandoned on the Site in October 2014. I further accept the Landlord has put the Tenants on notice that their abandoned property will be disposed of at a future date. That being said, I find that at the time the Landlord filed their application for Dispute

Resolution on July 8, 2016, the Landlord had not suffered a loss of $6,500.00, as the Tenants' possessions had not yet been disposed of. Furthermore, from her own submissions, the Landlord stated that each Site cleanup resulted in a different amount of loss which was dependent on the materials left to be removed. Accordingly, I find the Landlord's application for the removal of the Tenants' property to be premature and it is dismissed, with leave to reapply.

In regards to registered mail fees for bringing this application forward, I find that the Landlord has chosen to incur these costs that cannot be assumed by the Tenants. The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of *Act*. Section 82 of the *Act* provides for various methods of service. Therefore, I find costs incurred due to a service method choice are not a breach of the *Act*. Accordingly, I find that the Landlord may not claim mail costs, as they are costs which are not denominated, or named, by the *Act* and the claim is dismissed, without leave to reapply.

Conclusion

The Landlord was not successful with her application as indicated above. This decision is final, legally binding, and 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: January 16, 2017

Residential Tenancy Branch