



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, LRE, OLC, PSF, RP, RR

Introduction

This hearing dealt with a tenant's Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "Act") for:

- an order to make emergency repairs for health or safety reasons;
- an order to suspend or set conditions on the landlord's right to enter the rental unit;
- an order for the landlord to comply with the *Act*, regulation and/or the tenancy agreement;
- an order for the landlord to provide services or facilities required by the tenancy agreement or law;
- an order for repairs made to the unit, site or property; and
- an order to reduce rent for repairs, services or facilities agreed upon but not provided.

The landlord and tenant appeared at the teleconference hearing and gave affirmed testimony. The tenant also appeared with a witness J.H. who also gave affirmed testimony. During the hearing the landlord and tenant were given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Issue(s) to be Decided

- Is the tenant entitled to an order to make emergency repairs for health or safety reasons?
- Is the tenant entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit?
- Is the tenant entitled to an order for the landlord to comply with the *Act*, regulation and/or the tenancy agreement?
- Is the tenant entitled to an order for the landlord to provide services or facilities required by the tenancy agreement or law?
- Is the tenant entitled to an order for repairs made to the unit, site or property?
- Is the tenant entitled to an order to reduce rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The undisputed evidence established that the tenant resides in a 5th wheel on the landlord's property. The tenant moved to the property on June 1, 2016. The rent at the start of the tenancy was \$600.00, however, the landlord agreed to reduce the rent to \$500.00 effective September 2016. The landlord and tenant disagreed as to why the rent was reduced and for how long, however, the undisputed evidence was that the tenant was required to pay rent in the amount of \$500.00 for the month of December 2016. The tenant testified that the only service he requires from the landlord is water.

The tenant's application arises from a complaint that the tenant's water stopped working sometime between December 1st and December 3rd, 2016 until on or after December 28, 2016. The tenant complained that he had no running water to his 5th wheel for all of December. The tenant testified that as a result of having no water he had to rely upon friends who he stayed with to eat, shower and do laundry.

The undisputed evidence established that the landlord supplies water that runs through a 3" pipe which comes out of the ground and is then connected to a hose that directs the water to the tenant's 5th wheel. The tenant and landlord agreed that the hose that is hooked up to the pipe is the tenant's hose.

The tenant testified that that water stopped working in December, in part, because the landlord turned it off, and because the landlord's pipes froze. The tenant claims that the landlord's pipes were not insulated causing the pipes to freeze.

The tenant testified that he notified the landlord of the problem when he discovered that there was no running water at the beginning of December. The tenant testified that he made oral requests and sent emails asking the landlord to fix the problem and restore his water. The tenant testified that the landlord did not address the problem.

The tenant relied on his oral testimony and the testimony of his witness J.H. who confirmed that the tenant did not have any water to his 5th wheel and that the tenant wasn't able to live in the 5th wheel without it. The tenant is seeking a full rent reduction in the amount of \$500.00 as a result of having not having access to running water for the month of December 2016.

The landlord testified that the tenant reported a problem on December 5th at which time the tenant had informed the landlord that he had been without water for four days. The landlord testified that he immediately responded and found that the tenant's ½" uninsulated hose was frozen and not the landlord's pipes.

The landlord testified that he tried to explain to the tenant that his hose was frozen and the steps required to ensure the water in the hose does not freeze. The landlord acknowledged that it is his responsibility to supply water to the tenant, however, he argued that the hose hook up is the responsibility of the tenant. The landlord's position is that he fulfilled his obligation to supply water to the tenant and that the problem lies with the tenant's hose.

The landlord testified that there were other water sources available for the tenant to connect to or access water that the landlord pointed out to him. The tenant testified that these other alternatives were not workable.

The landlord testified that he had offered the tenant access to showering and laundry facilities in the past out of his home. The landlord said that he would have accommodated the tenant if the tenant had contacted him. The landlord testified that he attempted to contact the tenant by phone and email to which he received no response. The tenant acknowledged that he did not respond to all the attempts the landlord made to contact him.

The landlord testified that the tenant had given him notice that he was leaving at the end of December 2016. The landlord testified that soon after the tenant approached him about the frozen water, the tenant disappeared. The landlord, thinking that the tenant was gone, shut off the water in order to protect his property from being flooded. The landlord testified that the tenant disconnected his hose from the water pipe which meant that the water would run out of the pipe onto the ground if the water was turned on.

The tenant testified that he disconnected the hose from the water pipe as it was frozen. The tenant testified that there is a water turn off valve at the pipe which could have been turned off without shutting all the water off.

The landlord testified that he turned off the water on December 9th for two days when it was below freezing temperatures. The landlord testified that the water was turned back on December 12, 2016. The landlord testified that the water was shut off again on December 21, 2016 until December 28, 2016 due to freezing temperatures. The landlord testified that he would turn the water on once a day during this time. The landlord testified that he was also worried about his own pipes freezing when he turned the water off believing the tenant was gone. The landlord testified that the tenant was not seen until the tenant returned with a copy of the tenant's application he served on the landlord on December 28, 2016.

With respect to the tenant's request for emergency repairs, the tenant testified that when the temperature falls below freezing, as it was in December 2016, the water freezes. The tenant testified that the water froze in December 2016 because the landlord does not have insulated pipes. The tenant was seeking emergency repairs to require the landlord to insulate the pipes so that the water would not freeze. The landlord argued that it was tenant's hose that froze and not the pipes.

The tenant also testified that he wanted to stop the landlord from coming to his door and yelling as he felt harassed by the landlord. The tenant is seeking an order to set conditions on the landlord's right to enter the rental unit to stop the alleged harassment.

Analysis

Based upon the above oral testimony and on a balance of probabilities, I find as follows.

I find that the tenant was without water on a consistent basis from about December 3rd to on or about December 28, 2016. I find that the tenant was without water in part due to freezing temperatures and in part due to the landlord who admittedly turned off the water from December 5th to 12th and December 21st to the 28th.

The landlord and tenant gave conflicting testimony as to the explanation for the lack of water to the tenant's unit. The tenant claims that it was the landlord's pipes that froze. The landlord claims that it was the tenant's hose that froze. The landlord also claims to have had to turn off the water to preserve the landlord's property from flooding as the tenant unhooked the hose to the pipe. The tenant acknowledged unhooking the hose that connected to the pipe.

Pursuant to section 55 of the *Act*, the onus is on the tenant to establish that the landlord has not complied with the *Act* and that the landlord has failed to supply services required by the tenancy agreement or law.

Section 26 of the *Act* addresses the landlord's and tenant's obligations to repair and maintain the manufactured home site. The tenant has argued that the landlord has breached their obligation to repair and maintain the pipes so that the water supply doesn't freeze.

Based upon the disputed testimony, I find that there is insufficient evidence to find that the landlord has not complied with the *Act* and that the landlord has failed to supply water to the tenant's 5th wheel. In making this finding I have taken into consideration the fact that the landlord and tenant gave equally plausible explanations as to the reasons for the lack of water to the tenant's 5th wheel. As both explanations are plausible, I find that there is insufficient evidence to conclude, on a balance of probabilities, that the landlord was liable for the disruption of the service. Accordingly, I dismiss the tenant's claim for an order that the landlord comply with the *Act*; for an order requiring the landlord to provide services required by the tenancy agreement or law; and for an order to make repairs to the site or property.

As I find that there is insufficient evidence to find the landlord liable for the disruption to the tenant's water supply, there is insufficient evidence to support the need for emergency repairs. Accordingly, I dismiss the tenant's claim in this regard.

Section 58 of the *Act* allows for a deduction of an amount of rent if there is a finding that a landlord has not complied with the *Act*, the regulations or a tenancy agreement. As I have I have determined that there is insufficient evidence to find the landlord has not complied with the *Act*, the regulations or the tenancy agreement, I find that the tenant is not entitled to a deduction from rent. Accordingly, I dismiss the tenant's claim in this regard.

Section 63 of the *Act* allows an Arbitrator to suspend or set conditions on the landlord's right to enter the manufactured home site where the Arbitrator is satisfied that a landlord is likely to enter other than as authorized under section 23 of the *Act*.

The tenant testified that he wanted to stop the landlord from harassing him by restricting the landlord from coming to his door and yelling at him. Based upon the tenant's testimony, I find that there is insufficient evidence that the landlord is likely to enter the tenant's unit contrary to section 23 of the *Act*. Therefore, I dismiss the tenant's claim for an order to suspend or set conditions on the landlord's right to enter the rental unit.

For the reasons set out above, I dismiss the tenant's application.

Conclusion

The tenant's application is dismissed.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, 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: February 7, 2017

Residential Tenancy Branch