



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, RR, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Manufactured Home Park Tenancy Act* (the "Act") for:

- a monetary order for the cost of emergency repairs to the manufactured home pursuant to section 60;
- a monetary order for compensation for damage or loss under the *Act*, *Manufactured Home Park Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 60;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 58; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 65.

The tenant and the landlord's agent (the "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed she was an agent of the landlord's company named in this application, and had authority to speak on its behalf.

The landlord confirmed receipt of the tenant's application for dispute resolution and supporting documents. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with these documents.

Preliminary Issue- Service of Landlord's Evidence

I received an evidence package from the landlord on March 20, 2017, two days prior to the hearing. The landlord could not provide details as to when or how this evidence was served to the tenant. The tenant testified that he did not receive this evidence.

Based on the above, I find the landlord has provided insufficient evidence to establish service of the 27 page evidence package to the tenant. For these reasons, I have not relied on the landlord's evidence package to form any part of my decision.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for the cost of emergency repairs to the manufactured home?

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided?

Is the tenant authorized to recover the filing fee for this application from the landlord?

Background and Evidence

As per the testimony of the parties, the tenancy began December 2015, on a month-to-month basis. Rent in the amount of \$543.00 is payable on the first of each month. The tenant continues to reside in his manufactured home on the landlord's manufactured home site.

On November 16, 2016 a fire to an adjacent home occurred. On this same date the tenant encountered electrical problems in his home. The tenant contacted the landlord and in response, an electrician attended and made repairs to the tenant's electricity inside his home.

A previous Decision was rendered on February 6, 2017 regarding this tenancy. The file number has been included on the front page of this Decision for ease of reference. In the February 6, 2017 Decision, the parties mutually agreed that an electrician would attend the manufactured home at 8:00 a.m. on Wednesday February 8, 2017 to perform any and all repairs related to the electrical system.

The parties confirm that on February 8, 2017, an electrician performed repairs to the power lines located outside the manufactured home.

Tenant Claim

The tenant is now seeking compensation in the amount of \$11,966.50 including the following;

Item	Amount
Room & Board	\$5,850.00
Dog Boarding	\$2,275.00
Food Replacement	\$480.00
Repairs to Unit	\$1,662.50
Re-imbursement of Pad Rent	\$1,698.00
TOTAL	\$11,965.50

It is the tenant's position that his home has been without adequate power since the fire. He testified that his home has been inhabitable and was therefore forced to live elsewhere from November 16, 2016 to February 8, 2017. He testified that the initial electrical repair conducted on November 16, 2016 was temporary and served only to restore minimal power until such time that the main power line outside was repaired. Because the line outside was not repaired until February 8, 2017, he seeks to recover the above costs. In an effort to support his position, the tenant has provided a "receipt" for room and board, "receipt" for dog boarding, an on-line grocery order dated February 18, 2017, an estimate for repairs, photographs and a report from his security provider.

Landlord Reply

In reply, the landlord testified that the work conducted on November 16, 2016 was a temporary fix and every effort to permanently fix the electrical was met with resistance by the tenant. Specifically, the tenant did not provide a key and was unavailable to let the electrician into the home on scheduled appointments. It is the landlord's position that despite the temporary fix, the tenant still had access to full power throughout the period claimed. The landlord contends that at some time during the claimed period the tenant and/or his friends shut off the power.

Witness, Electrician

The electrician provided affirmed testimony that sometime in November he was contacted to assess the lack of power in the tenant's home. He testified that in this initial visit he assessed the issue and repaired the electrical problem inside the home permanently. He testified that upon his departure everything was running, all power was on. The electrician testified that the source of the issue was likely due to a heavy load or power surge. The electrician confirmed that a fire could cause a power surge and was most likely the source of this particular problem.

The electrician testified that he was later contacted to return to the manufactured home for a subsequent electrical problem. The electrician testified that he attended the manufactured home on two to three occasions but because the tenant was not present he could not gain access or assess any reported electrical issues.

Based on the order of the Residential Tenancy Branch, the electrician returned to the manufactured home park on February 8, 2017 and replaced the overhead line. The electrician testified that the tenant denied him access to the tenants manufactured home this date.

Analysis

Section 60 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

In this case, the onus is on the tenant to prove, on a balance of probabilities, the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

The tenant seeks a monetary order in the amount of \$11,965.50.

I find the tenant has provided insufficient evidence to establish a loss; particularly that he did not have access to full power following the electrician's repair on November 16, 2016. Contrary to the tenant and landlord testimony that the electrician made a temporary repair on November 16, 2016, the electrician testified that he made a permanent repair and restored full power on November 16, 2016.

I prefer the testimony of the electrician. The electrician was consistent in his testimony and did not waiver in his version of what happened. The tenant's evidence, on the other hand, lacked credibility. Initially the tenant testified that the home did not have power during the claimed period then the tenant changed his testimony stating that the home had power, it was just reduced. The tenant acknowledged that neither the landlord nor

electrician was permitted access to the home during the entire claim period to confirm loss of power. The tenant provided no explanation that would justify denying the electrician access to the home on February 8, 2017. The electrician's testimony has persuaded me on the balance of probabilities that the tenant's power was fully restored on November 16, 2016.

I find the repairs made on February 8, 2017 were based on the landlord's belief that a permanent repair was required and not the need for repair. The electrician did not testify that this outside line repair was required; rather he testified that he performed this work in response to the parties' mutual agreement at the last hearing.

I find the tenant has failed to meet the burden of proof that damage or loss exists. Therefore I dismiss the tenant's monetary claim due to insufficient evidence, without leave to reapply.

As the tenant was not successful in this application I find he is not entitled to recover the filing fee.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

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: April 3, 2017

Residential Tenancy Branch