



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC, OLC, RPP, FF

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking an order to have the landlords comply with their obligations; return the tenants' personal property, and a monetary order.

The hearing was conducted via teleconference and was attended by both tenants and one of the named landlords and two agents.

I note from their submissions the tenants do not seek to have the landlord return the damaged satellite dish, they seek only to be compensated for the replacement they purchased. In fact, on the Application for Dispute Resolution the tenants checked off the box "Return the tenant's personal property but then wrote beside that line "replacement cost of satellite dish". As such, I amend the tenants' Application to exclude the matter of returning the satellite dish.

I note that since March 2016 these parties have had at least 6 separate Applications for Dispute Resolution adjudicated (file numbers noted on the cover sheet of this decision). In each of those cases the issue of jurisdiction was raised, in part, because there were questions as to ownership of the manufactured home and the parties had matters before the Provincial Court of British Columbia that were significantly linked to that issue.

I note in the September 2016 decision jurisdiction was accepted. No evidence or testimony was provided to me in regard to the status of that decision as of the date of this hearing. I note that the decision granted the landlords an order of possession effective two days after service on the tenants to end the tenancy.

The tenants submitted a copy of the April 7, 2017 judgement by the Honourable Judge S.D. Frame settling the matter of ownership of the manufactured home. Based on the judgment I accept that the tenants are not owners of the manufactured home and the parties have a landlord/tenant relationship for the rental of a manufactured home site that is governed by the *Manufactured Home Park Tenancy Act (Act)*.

While I accept that the landlords written submission suggests that I don't have jurisdiction to hear this claim because the individual who caused damage to the tenants' satellite dish did so on his own accord, I find the question is not a matter of jurisdiction so much as it is to determine if the individual acted as a landlord or an agent of the landlord when he committed the act.

If I find the individual acted as a landlord or as an agent of the landlord then the landlord may be held responsible for any compensation to which the tenants may be entitled. In the alternative,

if I find the actions by the individual were not taken as the landlord or as an agent of the landlord the tenants remain at liberty to pursue their claim against the individual through a court holding jurisdiction over such matters and parties.

Based on all of the above, I accept jurisdiction on all the matters raised in the tenants' Application for Dispute Resolution.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to an order requiring the landlord to comply with their obligations under the *Act*, regulation or tenancy agreement; to a monetary order for compensation for damage to the tenants' personal property and to recover the filing fee from the landlords for the cost of the Application for Dispute Resolution, pursuant to Sections 20, 60, and 65 of the *Act*.

Background and Evidence

The parties agreed the tenancy began in November 2011 for a current monthly pad rent of \$217.50 due on the 1st of each month. The parties agree that in February 2016 the tenants' satellite dish was removed and damaged from where it had been located.

The tenants provided a copy of the January 12, 2016 decision that recorded a settlement agreement that allowed for the tenancy to continue and included the following terms:

- a) The tenants shall retain the services of a satellite dish technician at their expense and shall work together with the landlord in an attempt to relocate the satellite dish to a mutually convenient position;
- b) The tenants shall use their best efforts to clean up their yard, and
- c) The parties will treat each other with courtesy and respect for the remainder of the tenancy.

The tenants submit that after the January 12, 2016 decision the landlords' agent FC purposely damaged and removed the satellite dish that was the subject of the above noted settlement agreement. The landlords do not disagree that FC removed and damaged the dish but they submit that he did so on his own accord and did not, at the time act as an agent of the landlord.

The landlords submitted that in order to facilitate snow removal the landlord AB moved the satellite dish towards the tenant's fence to ensure that it would not be damaged by the blade of the plow. They further submit that when they did this the male tenant stormed out of the house and assaulted AB.

The landlord submitted that later FC took it upon himself to tie a rope onto the satellite dish and drag it down the road. Their submission went on to assert that FC was upset by the male tenant's alleged assault of AB and he was tired of being bullied by the male tenant on previous occasions. The landlords submitted that FC had never been hired as an employee of the landlords but that he had been hired for "piecework".

In support of their position the landlords submitted a handwritten note attributed to FC that states:

“I was the one who destroyed the satellite dish belonging to DS and SK. I did this of my own accord. AB had nothing to do with this and he did not instruct me to destroy the dish. The dish had not been damaged until I drug it down the road. I was charged for mischief by the R.C.M.P.”

The tenants' position is that FC acted in the capacity of representing the landlord and as a result the landlord is responsible for the damage and subsequent requirement to replace the satellite dish.

In support of their position the tenants submitted the following relevant documentary evidence:

- Various court orders and documents, including a statement made to local police by FC regarding the damage to the satellite dish;
- Several photographs; and
- A receipt dated February 24, 2016 in the amount of \$450.00 from a friend of the tenants indicating that it was for “satellite dish receiver and parts.”

The transcript of the police statement continues for 6 pages and provides FC's recollections regarding the removal and damage to the satellite dish as well as events that occurred prior to and followed the removal of the dish.

In the report FC accepts responsibility for removal and damage to the satellite dish. FC repeats several times throughout the transcript that “AB” or “we” had all the legal papers to remove the dish.

FC also stated that he preferred to remove the dish the “right way” to avoid the violence that AB endured because of the male tenant. FC remarks that several people in the park also are scared of the male tenant including himself because of his bullying behaviour.

While neither party provided any testimony regarding whether or not the settlement agreement of January 12, 2016 terms had been met the tenants submitted into evidence an email from a computer technician to the female tenant dated January 22, 2016 stating that the female tenant had contacted him for a “better location for her satellite tv. I came over and found unfortunately there is no other shot available. There simply isn't line of site anywhere else.” [reproduced as written].

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 1 of the *Act* defines a landlord, in relation to a rental unit, as any of the following:

- The owner of the manufactured home site, the owner's agent or another person who, on behalf of the landlord permits occupation of the manufactured home site under a tenancy agreement;
- The heirs, assigns, personal representatives and successors in title to a person referred to above; or
- A person, other than a tenant whose manufactured home occupies the manufactured home site, who is entitled to possession of the manufactured home site and exercises any of the rights of a landlord under a tenancy agreement or the *Act* in relation to the manufactured home site.

Residential Tenancy Policy Guideline 26 defines an agent as a person who acts on behalf of a landlord or tenant, speaks on behalf of, and often appears on behalf of the party. An agent may also be a person who has acted for a party during the course of a tenancy, such as a property manager who acts on behalf of a landlord.

In the case before me, despite the landlords' submissions that FC was not an agent of the landlord and that he acted in response to the alleged assault on AB and his own animosity towards the male tenant, I am satisfied that FC was acting as an agent of the landlord when he removed and damaged the satellite dish.

In making this finding I have substantially relied upon the police statement made by FC. As noted above FC repeatedly states that the landlord had all the legal paperwork and that the tenants were supposed to have removed the dish two years previously.

While I accept that FC commented on the male tenant's alleged assault of AB I find there is no indication, in the statement, that FC was "upset" that AB had been allegedly assaulted by the male tenant. In fact, FC noted in the police statement that he removed it the "right way" so that he could avoid confrontation with the male tenant, but stated nothing more about the alleged assault.

In addition, despite FC's written statement provided by the landlords, an agent of landlord will often act in a manner that has not been directed by the owner or another landlord's agent such as a property manager.

Further I find it is not necessary to be a hired full or part time employee or a manager to be an agent. Whenever a landlord hires a person to complete work that ensures the landlord is able to comply with their obligations under the *Act* I find that person becomes an agent for the landlord. As such, the landlord becomes responsible for how that person they have hired achieves the tasks they have been contracted to complete.

I accept in this case that FC was hired to complete snow removal and in order to achieve the snow removal the landlord AB moved the satellite dish out of the way. However, I am also satisfied that this method was not acceptable to the tenant and that as a result, FC felt that the only way left to accomplish his task was to remove the dish, himself.

However, despite the January 12, 2016 agreement that required the tenants "to work together with the landlord in an attempt to relocate the satellite dish to a mutually convenient position" I

find there is no evidence that the tenants took any steps to work toward achieving the goal of moving the satellite dish.

While I recognize that the tenants did submit evidence that they contacted a technician who said there was no other spot to put the dish; there is no evidence that the tenants even relayed that information to the landlords at any time. As a result, I find the tenants' failure to work with the landlords, in light of all of the other issues between the landlords on site and the tenants, was a contributing factor that gave rise to the circumstances that led to FC's actions.

I also find that the male tenants' response to the AB's attempt to temporarily move the dish to accomplish the snow removal was unreasonable and also contributed to the increased animosity between all parties.

Section 26(3) states that whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not seize any personal property of the tenant, or prevent or interfere with the tenant's access to the tenant's personal property.

Based on the above, I find that when FC removed and damaged the satellite dish he was acting as an agent for the landlord and as such the landlords are responsible for compensation for either repairs or replacement of the satellite dish subject only to the tenants' obligations to mitigate their losses and establish the value of that loss.

Section 7 of the *Act* states if a party to a tenancy does not comply with the *Act*, regulations or their tenancy agreement, the non-complying party must compensate the other party for any damage or loss that results.

The section goes on to state that the party who claims compensation for damage or loss that results from the other's non-compliance with the *Act*, regulation or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

I find the tenants' failure to work toward compliance with the settlement that they agreed to in the January 12, 2016 decision and the male tenant's unreasonable response to the landlord's temporarily moving the dish were certainly not steps I could consider were aimed at minimizing any damage or loss.

In addition, the tenants have provided no evidence that the satellite dish that was removed or the one they purchased from their friend were comparable models. They have also provided no evidence that the price they paid for a replacement was appropriate and reasonable for the model that they did purchase.

The tenants' claim is for \$450.00 and the landlord submitted that a satellite dish can be purchased for \$90.00. When one party to a dispute provides testimony or evidence to establish the value of loss and the other party provides an equally plausible assertion of what those losses might be, the party making the claim has the burden of providing additional evidence to support their position.

I find in the absence of any independent documentary evidence to establish the value of the dish lost and the dish purchased as a replacement, the tenants have failed to meet the burden to establish the value of their loss.

Conclusion

For the reasons noted above, I dismiss the tenant's Application for Dispute Resolution in its entirety.

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: June 29, 2017

Residential Tenancy Branch