Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 368408 B.C. LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF, O

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution (the "Application") for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and to recover the filing fee. The Tenant also applied for "Other" undisclosed issues.

The Tenant, an assistant for the Tenant, and an agent for the Landlord appeared for the hearing. Only the Tenant and the Landlord's agent provided affirmed testimony. The Landlord's agent confirmed receipt of the Tenant's Application by registered mail and both parties confirmed receipt of each other's documentary evidence which was served prior to the hearing.

The hearing process was explained and the participants were asked if they had any questions. Both parties were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issue(s) to be Decided

Is the Tenant entitled to the return of $25,000.00?

Background and Evidence

The parties agreed that this tenancy for a site in the manufactured home park (the "rental site") started on September 1, 2016. A written tenancy agreement was prepared and signed by the Landlord on June 3, 2016 and by the Tenant on June 13, 2016. Rent for the rental site is payable by the Tenant to the Landlord in the amount of $303.19 on the first day of each month.

The Tenant testified that she was living in a previous manufactured home park where she purchased a new trailer from a company that manufactures them. She then agreed with the Landlord to rent the site in the dispute park and as a result, moved her trailer to the rental site to take occupancy of it.

The Tenant stated that after she had signed the tenancy agreement and prior to her taking occupancy of the rental site, the Landlord requested $25,000.00 as a condition of accepting the tenancy for the rental site. The Tenant testified that the Landlord purported this money to be a “clean up” fee and then stated it was a “site fee”. The Tenant stated that without her knowing what her rights under the tenancy agreement were, she gave the Landlord the $25,000.00. The Tenant provided a copy of the cheque given to the Landlord for this amount and a receipt which she got from the Landlord on June 21, 2016. The receipt states that the money is for a “Deposit”.

The Tenant testified that she did not know what her rights were under the Act until she became aware of this breach seven months into the tenancy. The Tenant testified that she wrote to the Landlord explaining that she had paid the $25,000.00 contrary to the Act and that the Landlord was not in her rights to collect this money because it was an unjust and unfair charge which she wanted back. However, the Landlord refused to return this money and the Tenant now claims recovery of it.

The Landlord’s agent testified that the Tenant was informed before she signed the tenancy agreement that there was a requirement for her to pay $25,000.00 as a fee to put her new trailer on the rental site. The Landlord’s agent explained that the money is a “lot fee” which covers the costs incurred by the Landlord to clean up and ready the lot for occupancy for new trailers when they are requested by potential renters. The Landlord explained that this money may cover costs such as purchasing an old manufactured home on a lot, removing it, and having it destroyed. The Landlord’s agent explained that this is the only way the Landlord can provide an owner of a new trailer with an available site as the park does not have any empty lots unless they are requested by renters for which they have to pay this fee.

The Landlord’s agent stated that the money has nothing to do with the tenancy agreement or the occupancy of the rental site and it was nothing to do with a clean-up fee. The Landlord’s agent stated that the money was not a deposit and it was not refundable but was money paid by the Tenant in order to secure and ready the lot for rental which included “hard costs”. The Landlord’s agent confirmed that the Tenant had no financial interest in the rental site. The Landlord’s agent explained that in no way did

she deceive, trick, or force the Tenant into paying the money; in fact, the Tenant was informed upfront about the fee because two other renters were turned away and the Tenant was given priority. The Landlord's agent submitted that the Tenant had paid this money voluntarily and questions why the Tenant is now seeking the return of it.

The Landlord's agent argued that the exchange of the $25,000.00 was separate from the tenancy agreement and must be treated as such. The Landlord's agent asserted that the requirement for the Tenant to pay the $25,000.00 was requested before the tenancy was entered into and therefore in her view, it should be treated as a separate agreement and not one that is linked to the tenancy.

The Tenant confirmed that she had no financial interest or claim in the ownership of the rental site and argued that it was not a separate agreement and that she had paid the $25,000.00 as an illegal fee for renting the site. The Tenant testified that the Landlord's agent was lying when she said that the rental site was specifically readied for the Tenant at her request and for the tenancy.

Analysis

In making my findings on this claim, I first turn to the following provisions of the Act.

Section 5 of the Act does not allow parties to avoid or contract outside of the Act or the Manufactured Home Park Tenancy Regulations (the "Regulations"). Any attempt to do so is of no effect. Section 6(1) of the Act states that the rights, obligations and prohibitions established under the Act are enforceable between a landlord and tenant under a tenancy agreement.

Section 17 of the Act prevents a landlord from requiring or accepting a security deposit in respect of a rental site. Section 15 of the Act states:

"*A landlord must not charge a person anything for*

(a) accepting an application for a tenancy,

(b) processing the application,

(c) investigating the applicant's suitability as a tenant, or

(d) accepting the person as a tenant."

[Reproduced as written]

Section 5(1) of the Regulations allows a landlord to charge the following nonrefundable fees:

"(a) direct cost of replacing keys or other access devices;

(b) direct cost of additional keys or other access devices requested by the tenant;

(c) a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;
(d) subject to subsection (2), an administration fee of not more than $25 for the return of a tenant's cheque by a financial institution or for late payment of rent;
(e) a fee for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement."

[Reproduced as written]

The Act defines a service or facility as the following:

(a) water, sewerage, electricity, lighting, roadway and other facilities;
(b) utilities and related services;
(c) garbage facilities and related services;
(d) laundry facilities;
(e) parking and storage areas;
(f) recreation facilities;

[Reproduced as written]

In this case, I find the Tenant and Landlord entered into a tenancy agreement that was signed by the Tenant on June 13, 2016. The question that I must determine is whether the $25,000.00 paid by the Tenant is contrary or separate to the Act.

Based on the evidence before me, I find the payment of the $25,000.00 by the Tenant was intrinsically linked to the tenancy. This is because I accept the evidence that it was requested by the Landlord shortly before the tenancy was entered into and was paid by the Tenant after the tenancy agreement was signed and entered into.

I am unable to conclude that the agreement to pay the money was separate to the tenancy as the money was requested from the Tenant as a condition of the Tenant being chosen from a pool of two other potential candidates for occupancy of the rental site. In this respect, I find the Landlord breached Section 17(d) of the Act by requesting a charge from the Tenant for accepting her as a Tenant of the rental site.

I also note that the Tenant was given a receipt for the money paid which defined the money as a "lot deposit". While I accept the parties' evidence that the money was not exchanged as a deposit, it is important to point out that the Act does not allow for a security deposit. Neither, do I find the amount paid by the Tenant was a fee for a service or facility as defined by the Act above.

Furthermore, I also accept the parties' undisputed evidence that the payment of the $25,000.00 was not paid with the intention that the Tenant would have retained a

financial or vested interest in the ownership of the rental site. If such a claim had been made by the parties then I would have been inclined to agree that this was a separate agreement that was not under the jurisdiction of the Act.

In turning my mind to the tenancy agreement, I find it is silent about the $25,000.00 requirement the Tenant was obligated to pay for occupancy of the rental site. I also note that there is nothing in the Park Rules provided by the Tenant that allows for such a fee.

The Landlord provided insufficient documentary evidence to show that the parties had contracted separately for the $25,000.00 and that this money had been paid **prior** to the rental site being remodeled and made available for rental. The Landlord also provided insufficient evidence of the costs incurred to make the rental site vacant after the alleged request of the Tenant. However, the evidence before me is that the payment was provided shortly after the tenancy agreement was signed and therefore, I find it is intrinsically linked to the tenancy.

I find the evidence leads to me conclude that the Landlord has charged the Tenant with a fee that is prohibited under the Act and that the Landlord relies on disputed oral evidence that they had a separate agreement for the Tenant to pay $25,000.00 for occupancy of the rental site. Even if there was such an oral agreement, I find the Landlord would have been contracting with the Tenant outside of the Act, which is strictly prohibited.

Based on the foregoing, I grant the Tenant's Application for the recovery of the $25,000.00 she paid at the start of the tenancy as this amount was illegally obtained by the Landlord. The Tenant is issued with a Monetary Order for this amount which must be served on the Landlord and may be enforced through the Small Claims Division of the Provincial Court as an order of that court.

As the Tenant has been successful in her claim, I also grant her request to recover the $100.00 filing fee paid to file this Application. The Tenant may achieve this relief by deducting $100.00 from a future instalment of rent pursuant to Section 65(2) of the Act. The Tenant may want to attach a copy of this Decision when making the reduced rent payment, even though the Landlord will be sent a copy of this Decision by the Residential Tenancy Branch.

Conclusion

The Landlord has breached the Act by taking $25,000.00 from the Tenant at the start of the tenancy. The Tenant's Application to recover this amount is granted and the Tenant is issued with a Monetary Order for recovery of this amount. The Tenant may recover her filing fee of $100.00 from a future installment of rent.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: July 19, 2017

Residential Tenancy Branch