



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUMMERLAND BEACH RV & CAMPGROUND
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC RR FF

Introduction:

Both parties attended the hearing, the landlord represented by the park manager, and they gave sworn testimony. The landlord agreed he received the tenant's application and amendments by registered mail. I find the documents were legally served pursuant to sections 81 and 82 of the Act. The tenant applies pursuant to the *Manufactured Home Park Tenancy Act* (the Act) for orders as follows:

- a) Compensation and a rent rebate for losses suffered due to the landlord's withdrawal of the facility of electricity contrary to section 21;
- b) To recover the filing fee for this application

Issues to be Decided:

Has the tenant proved on the balance of probabilities that they are entitled to compensation as claimed and to recover the filing fee for this application?

Background and Evidence:

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. Both parties agreed that the tenancy commenced May 1, 2016 and is now month to month. Rent is \$570.35 as of June 1, 2017. The parties agreed that the landlord turned off the electricity to a portion of the park on May 31, 2017 and it was not turned on again until July 10, 2017. The landlord said this was under order of the BC Safety Authority and it was to remain off until the flood waters receded. He noted they checked levels daily and turned on power as soon as possible. They also pumped out thousands of gallons of water but the park is below lake level so the level remained too high. He said the tenant's unit has 12 volt power that could have kept some appliances running and the landlord offered the use of generators to recharge the batteries on the 12 volt as needed but the tenant refused. They also offered her the use of a newer trailer but she refused. The tenant said that she was worried that the offered trailer might also lose its power but she agreed in the hearing that it never did. He noted also that this tenant was the only one that moved out but the tenant said other families moved out also. The tenant claims compensation as follows:

1. \$550 June rent + \$190 for 10 days in July 2017
2. \$220.99 for gas for her vehicle. She said she had to come back daily to check on her trailer and go to emergency meetings regarding the flood.
3. \$161.44 for a hotel bill. She noted the hotel had a microwave and refrigerator. She then moved into some people's houses to house sit or just accept their kindness. She agreed there were cooking and other facilities in the homes.
4. \$200 for food loss. She supplied a list of perishable items.
5. \$115.00 for repair to her refrigerator.
6. \$303.79 for a replacement refrigerator. She believes the landlord should be responsible for she thinks there would not have been a problem if the power had not been abruptly terminated. She agreed she had contents insurance.
7. \$593.60 for meals and groceries for she was not in her trailer and had to buy more food.

The landlord said he does not agree that they are responsible for any of the amounts claimed by the tenant. Her trailer continued to occupy the lot even if she chose not to stay in it. She could have moved her trailer; the tenant said that would be too expensive and there were no spaces. The landlord denied this. She said she did not want to stay in her trailer also for health and safety reasons as there was pooling water in front of the trailer which may have posed a health hazard. She noted her trailer was lifting off the ground. The landlord said she never got it re-levelled. She noted about 10 other families moved out too for a time and got assistance from emergency agencies. She said she received \$750 in assistance.

She noted when the generator offers were made, she already had another place. The landlord noted there was a refrigerator in the clubhouse which is about 150 ft. from the tenant's trailer. He said if she had stored perishables there immediately, there would have been no food spoilage. He said RV refrigerators go off and on all the time; there is no evidence that the power being off in June ruined the tenant's refrigerator. The tenant said the clubhouse was not open for a time according to a neighbour but a drug store in town stored her medication so it was not ruined. She agreed she had home insurance. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis:

Criteria for awards for compensation are set out in section 7 of the Act

S. 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.

(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.

This test must be satisfied:

1. Proof the loss exists
2. Proof the loss occurred solely because of the actions or neglect of the landlord in violation of the tenancy agreement or the Act
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to minimize the damage or loss.

I find the tenant has not shown that the landlord was negligent or that the landlord's negligence or non-compliance with the Act resulted in a loss. I find the landlord was complying with a government order for safety when he turned off the electricity on May 31, 2017. I find his evidence credible that they diligently pumped and monitored the water levels so it could be turned on again as soon as possible. I find the weight of the evidence is that the landlord offered the tenant some alternatives to moving out, such as making a generator available to recharge batteries so she could use the trailer's 12 volt battery for the essential services in the trailer. He also offered her another newer trailer to occupy during the critical time. She refused both of these offers. Although she said she feared for her health and safety due to the pooling water at her trailer, I find her testimony that she returned daily to check her trailer (in explaining her gas claim) is inconsistent with having a health concern over the water there. I find she left her trailer occupying a site and she is responsible for the rent for those months according to section 20 of the Act as the landlord was not negligent or non compliant with the Act or tenancy agreement. Although the tenant may have been very upset when the power went out, I find insufficient evidence that the landlord caused her losses by act or neglect.

In respect to her claims for spoiled food and/or new food and eating out, I find the landlord is not responsible for this compensation. I find she moved into a hotel with a refrigerator and microwave the first night and could have used their utilities to avoid food spoilage. After that she testified she lived in homes with full facilities so could keep items in the refrigerator and cook. I find the landlord not responsible for compensation for food. I also find insufficient evidence that the landlord is responsible for her

problems with her refrigerator. I find insufficient evidence that the termination of power on May 31, 2017 caused the refrigerator problem.

Furthermore, I find insufficient evidence that the tenant took steps to mitigate her loss as required by section 7(2) of the Act. The weight of the evidence is that she could have moved into another trailer with power, could have stayed in her trailer and used its 12 volt power but she chose not to. If she had chosen to mitigate her damages by taking advantage of the offered alternatives, I find she would not have incurred the costs of alternate lodging, gas for her vehicle to travel extra distances, food loss or eating out.

As the tenant's claim for compensation does not meet the requirements of section 7 of the Act, I dismiss her claim.

Conclusion:

I dismiss the tenant's claim in its entirety without leave to reapply and find she is not entitled to recover filing fees due to lack of success.

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: January 16, 2018

Residential Tenancy Branch