



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MNDC OLC

Introduction

This hearing dealt with an application by the tenant pursuant to the *Manufactured Home Park Tenancy Act* (“the Act”) for orders as follows:

- a Monetary Order pursuant to section 60;
- an Order directing the landlord to comply with the *Act* pursuant to section 55; and
- to recover the filing fee from the landlord for the cost of this application pursuant to section 65.

The landlord did not appear at the hearing, while the tenant was represented at the hearing by his advocate, P.L. The tenant and his advocate were given a full opportunity to be heard, to present evidence and to make submissions.

P.L. provided undisputed testimony that the tenant’s application for dispute resolution and evidentiary package were sent to the landlord by way of Canada Post Registered Mail on September 11, 2017. Copies of the Canada Post tracking number for the tenant’s application for dispute resolution and evidentiary package were provided to the hearing. Pursuant to sections 81, 82 & 83 of the *Act*, the landlord is deemed served with these documents on September 16, 2017, five days after their posting.

Following opening remarks, the tenant’s advocate asked to amend his application and to remove a significant number of items from his application for a monetary award. The tenant’s advocate asked that the application for a monetary order be reduced to \$3,792.40. As the landlord would not be prejudiced by this request and pursuant to section 57(3) of the *Act*, I amend the tenant’s application for dispute to reduce his claim from \$21,690.10 to \$3,792.40.

Issue(s) to be Decided

Is the tenant entitled to a monetary award?

Can the tenant recover the filing fee?

Should the landlord be directed to comply with the *Act*?

Background and Evidence

The tenant's advocate provided undisputed submissions explaining that this tenancy ended on August 31, 2015. The tenant's last day of occupation in the manufactured home park was August 15, 2015; however, an Order of Possession given to the landlord following arbitration before the *Residential Tenancy Branch* in 2014 held that the tenancy was to end on August 31, 2015.

The tenant's advocate explained that the tenant was seeking a monetary award of \$3,792.40. This figure represented a penalty against the landlord pursuant to section 44(2) of the *Act* which provides for the equivalent of six month's rent being paid to a person who has received a 12 Month Notice to End Tenancy. A person is entitled to this award if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 42 of the *Act* within a reasonable period after the effective date of the notice.

It was explained to the hearing by the tenant's advocate that the landlord was granted an Order of Possession following arbitration in 2014, where a 12 Month Notice to End Tenancy for Conversion of a Manufactured Home Park was issued to the landlord. The reason cited on this notice was as follows, "the landlord has all necessary permits and approvals required by law and intends in good faith, to convert all or a significant part of the manufactured home park to a non-residential use or a residential use other than a manufactured home park."

In addition to his application under this section of the *Act*, the tenant has applied for monetary award of \$2,500.00 for aggravated damages. The tenant's advocate argued that the tenant should be granted aggravated damages because the landlord had purposefully misled the *Residential Tenancy Branch* in past arbitrations. The tenant's advocate said that the landlord had provided assurances to other hearings that plans were underway to expand the size of the manufactured home park; however, the landlord also provided separate evidence that the park would become a non-residential site. The tenant's advocate detailed the manner in which no action in either respect had been taken by the landlord. The advocate described how the property had been allowed to lay fallow following the tenant's departure from the park in August 2015. He continued by explaining that no remedial action was taken by the landlord to prepare the land in any manner, and that the city eventually assumed control of the property, cleaning the land at its own expense and adding this bill to the landlord's taxes. The tenant's advocate said this entire experience was very difficult on the tenant and was done with

malicious intent, in a “deliberate” manner. For these reasons, the tenant is seeking aggravated damages.

Analysis

Section 60 of the *Act*, allows a party to receive compensation if damage or loss results from a party not complying with this *Act*, the regulations or a tenancy agreement. To prove a loss, the applicant must satisfy the following three 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 other party in violation of the *Act*, *Regulation* or tenancy agreement; and
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage.

At the hearing, the tenant’s advocate explained that they were seeking a monetary award because the landlord had failed to fulfill her obligations pursuant to section 44(2) of the *Act*. The tenant’s advocate presented undisputed testimony and evidence that the landlord was issued an order of possession contingent on the property being returned to its natural state. It was explained that following the tenant’s departure from the manufactured home, that the property lay fallow and that no steps were taken to remediate the land or to remove any of the structures present. Further testimony explained that in September 2017, the city itself eventually cleaned up the property. I find that the tenant has sufficiently shown that the property was not used for the purposes stated on section 44(2) of the *Act*. I find that the tenant is entitled to a monetary award pursuant to section 44(2) as steps have not been taken to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice. This section provides that the landlord must therefore pay the tenant an amount that is equivalent to six times the monthly rent payable under the tenancy agreement.

The second portion of the tenant’s application concerns a monetary award related to aggravated damages. *Residential Tenancy Policy Guideline #15* examines the issues of damages, and specifically aggravated damages. It notes they may be awarded when, “the wrong parted cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence.”

After considering the testimony of the tenant's advocate and reviewing the evidentiary package, I am satisfied that the tenant has sufficiently demonstrated that the landlord's actions were deliberate and that these actions caused the tenant to lose his home. I find that numerous inconsistencies were presented by the landlord regarding her true intention with respect to the property, and find that ultimately, no remedial was ever undertaken by her with respect to returning the property to its natural state. For these reasons, I award the tenant aggravated damages in the amount requested.

As the tenant was successful in his application, he may recover the \$100.00 filing fee from the landlord.

Conclusion

I issue a Monetary Order of \$3,892.40 in favour of the tenant as follows:

Item	Amount
Compensation for breach of section 44	\$1,292.40
Aggravated Damages	2,500.00
Return of Filing Fee	100.00
Total =	\$3,892.40

The tenant is provided with a Monetary Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: March 6, 2018

Residential Tenancy Branch