



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STONECLIFF PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, MNDC, FF

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein the Tenant sought an Order that the Landlord comply with the *Manufactured Home Park Tenancy Act*, the *Residential Tenancy Regulation* or the tenancy agreement, monetary compensation in the amount of \$24,274.90 and recovery of the filing fee.

The hearing was scheduled for teleconference at 3:00 p.m. on this date. Only the Tenant and her advocate, P.L., called into the hearing. As the Landlord failed to call into the hearing, service of the hearing package was considered.

P.L. testified that he served the Landlord on September 6, 2017 by registered mail to the address the Landlord has used for four years. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision. P.L. stated that to his knowledge the package was not picked up.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to section 90 of the *Residential Tenancy Act* documents served this way are deemed served five days later; accordingly, I find the Landlord was duly served as of September 11, 2017 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Tenant's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Tenant's Claims

At the outset of the hearing the Tenant's advocate confirmed that they wish to withdraw their application for loss of quiet enjoyment and aggravated damages such that the Tenant was only seeking compensation pursuant to sections 44 of the *Manufactured Home Park Tenancy Act* and recovery of the filing fee?

Issues to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord pursuant to section 44 of the *Manufactured Home Park Tenancy Act*?
2. Should the Tenant recover the filing fee?

Background and Evidence

The Tenant was in attendance at the hearing although her advocate spoke on her behalf. At the conclusion of the hearing the Tenant confirmed the testimony provided by the advocate was true to the best of her knowledge and belief.

The circumstances giving rise to the Tenant's application are as follows.

The Tenant rented a manufactured home site from the Landlord for \$215.40 per month.

On August 20, 2014 the Tenant received a 12 Month Notice to End Tenancy for Landlord's Use. By Decision dated November 2014, Arbitrator Maddia granted the Landlord's request for an Order of Possession effective August 31, 2015.

The Tenant did not receive her 12 months' rent pursuant to section 44(1).

On August 31, 2017 the Tenant applied for monetary compensation from the Landlord.

As of September 2017 all the manufactured homes were still on the property. In approximately September of 2017 the municipal district removed all the manufactured homes and applied the removal cost of over \$200,000.00 to the Landlord's tax bill.

As of the date of the hearing, March 20, 2018, the property has not been used for the stated purpose.

In the within action the Tenant sought the equivalent to 12 months' rent pursuant to section 44(1) of the *Act* as well as 6 month's rent pursuant to section 44(2). As her rent is \$215.40, the Tenant sought the sum of \$3,877.20 (\$215.40 x 18 months). The Tenant also seeks recovery of the \$100.00 filing fee for a total claim of \$3,977.20.

The Landlord did not attend the hearing to dispute any of the claims made by the Tenant.

Analysis

After consideration of the testimony and evidence before me, and on a balance of probabilities I find the following.

The full text of the *Residential Tenancy Act*, Regulation, and Residential Tenancy Policy Guidelines, can be accessed via the website: www.gov.bc.ca/landlordtenant.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Pursuant to section 42 of the *Manufactured Home Park Tenancy Act*, a Landlord may end a tenancy if the Landlord, in good faith, intends to use the property for their own purposes; this section reads in part as follows:

- 42** (1) Subject to section 44 [*tenant's compensation: section 42 notice*], a landlord may end a tenancy agreement by giving notice to end the tenancy agreement if the landlord has all the 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.

(2) A notice to end a tenancy under this section must end the tenancy effective on a date that

(a) is not earlier than 12 months after the date the notice is received and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

A Tenant who receives a 12 Month Notice to End Tenancy pursuant to section 42 is entitled to monetary compensation pursuant to section 44(1) of the *MHPTA* which reads as follows:

44 (1) A landlord who gives a tenant notice to end a tenancy under section 42 [*landlord's use of property*] must pay the tenant, on or before the effective date of the notice, an amount that is equivalent to 12 months' rent payable under the tenancy agreement.

I accept the Tenant's undisputed evidence that she was not compensated in accordance with the 12 Month Notice; as such, the Tenant is entitled to compensation equivalent to twelve months' rent totalling **\$2,584.80**.

Section 44(2) of the *MHPTA* provides that Tenant may be entitled to further compensation if the Landlord does not use the property for the purpose stated on the 12 Month Notice; this section reads as follows:

44 (2) In addition to the amount payable under subsection (1), if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 42 within a reasonable period after the effective date of the notice, the landlord must pay the tenant an amount that is the equivalent of 6 times the monthly rent payable under the tenancy agreement.

I accept the Tenant's undisputed testimony that the manufactured home park site was not used for the stated purpose; therefore, I find that the Tenant is entitled to a further six months' rent in the amount of **\$1,292.40**.

The Tenant, having been successful in her application is also entitled, pursuant to section 65(1) of the *At* to recover the **\$100.00** filing fee for this application

Conclusion

The Tenant is entitled to monetary compensation in the amount of **\$3,977.20** for the following:

12 months' rent pursuant to section 44(1)	\$2,584.80
6 months' rent pursuant to section 44(2)	\$1,292.40
Filing fee	\$100.00
TOTAL AWARDED	\$3,977.20

I grant the Tenant a Monetary Order in the amount of **\$3,977.20**. The Tenant must serve the Order on the Landlord and if the Landlord does not pay as ordered, the Tenant may file and enforce the Order in the B.C. Provincial Court (Small Claims Division).

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 23, 2018

Residential Tenancy Branch