



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a monetary order for compensation under the Act, to have the landlord comply with the Act, and to recover the filing fee from the landlord.

The tenant attended the hearing. As the landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The tenant's advocate stated the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on September 5, 2017, a Canada post tracking number was provided as evidence. The number has been noted on the covering page of this decision. The advocate stated that the package was returned unclaimed.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the landlord has been duly served in accordance with the Act.

The tenant appeared gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Procedural matter

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application.

In this case, the tenant has applied for monetary compensation; however, I have determined that those monetary claims are not sufficiently related. As an example the tenant seeks compensation for not received compensation that was related to the ending of the tenancy;

compensation for the landlord not using the property that was related to the ending of the tenancy. I find those are significantly related. However, I find issues for loss of quiet enjoyment are not sufficiently related to be heard at today's hearing.

I will, therefore, only consider the tenant's request for monetary compensation that relates to the issue of the notice that ended the tenancy. The balance of the tenant's application is dismissed, with leave to reapply. This does not extend any statutory time limits set out in the Act.

Issues to be Decided

Is the landlord entitled to monetary order for compensation under the Act?

Background and Evidence

On December 12, 2014, a decision was made that granted the landlord an order of possession for the subject property site effective August 31, 2015. This was based on a notice to end tenancy under section 42 of the Act. The reason for issuing the notice to end tenancy was a significant part of the manufactured home park to a non-residential use or a residential use other than a manufactured home park.

The tenant claims as follows:

a.	Compensation equal to 12 months of rent.	\$2,584.80
b.	Equivalent to 6 months of rent	\$1,292.40
c.	Filing fee	\$ 100.00
	Total claimed	\$3,977.20

The advocate for the tenant stated that the tenant did not receive compensation at the end of the tenancy that equalled the amount of \$2,584.80.

The tenant testified that they paid their rent for the previous twelve month; however, they lost all their receipts. The tenant stated that the money came from somewhere; however, at the time of the hearing could not specify. The tenant testified that they did not give the landlord vacate possession of the site as they did not remove their manufactured home.

The advocate stated that the landlord did not use the manufacture home part as stated which was to be a green space. The advocate that a public notice was given to the owner of the park that they must clean up and dispose of all the materials, abandoned vehicle by August 18, 2017. Filed in evidence is a copy of the advertisement on page 36 of the tenant's evidence. The advocate confirms that there is no one residing in the park.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the tenant has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 60 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.

Tenant's compensation: section 42 notice

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.

(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.

In this most cases, the tenant will withhold rent for the balance of their tenancy, by agreement, as this would be their compensation for receiving the notice to end tenancy. In this case, I accept the undisputed evidence that the tenant paid rent for the 12 months preceding the end of the tenancy and did not receive compensation as required by the Act. I find the landlord breached the Act and the tenant is entitled to compensation equal to 12 months' rent in the total amount of **\$2,584.80.**

(\$215.4 x 12=2,584.80)

However, I am not satisfied that the tenant has proven that the landlord has breached the Act, by using the property for a reason other than stated, which was non-residential use. The subject property was not being used for residential purpose or development. The property was

or had been sitting vacant since the park closed. I find the tenant has failed to prove the landlord has failed to comply with the reason stated.

The fact that the landlord had received an order to clean the sites up by the bylaw department by August 31, 2017, was because the tenants, including the tenant subject to today's hearing breached the Act, by not moving the manufacture home, and other belongings from the sites as required by the notice to end tenancy.

I find it would be unreasonable and unfair to compensate a tenant when this was a direct result of the tenant's violation the Act by failing to remove the manufacture homes from the site. I find that this does not prove the landlord used the property for a residential purpose. This simply proved that the tenants abandoned their property, causing penalties to the landlord. Therefore, I dismiss this portion of the tenant's claim without leave to reapply.

I find that the tenant has established a total monetary claim of **\$2,684.80** comprised of the above described amount and the \$100.00 fee paid for this application. The tenant is granted a formal order pursuant to section 60 of the Act.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The tenant is granted a monetary order in the above noted amount.

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 21, 2018

Residential Tenancy Branch