



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR, MNRT, MNDCT, OLC, LRE

Introduction

This hearing dealt with the tenants' application pursuant to the *Manufactured Home Park Tenancy Act* (the *Act*) for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 59;
- cancellation of the landlord's 10 Day Notice pursuant to section 39;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 60;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 27;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 55; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 63.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to respond to the statements made by the other party.

As the landlord confirmed that they received copies of the tenants' dispute resolution hearing package sent by the tenants by registered mail on February 26, 2018, I find that the landlord was duly served with this package in accordance with section 82 of the *Act*. As the landlord confirmed that they had received the tenants' written evidence in advance of this hearing, I find that the tenants' written evidence was served in accordance with section 81 of the *Act*.

At the hearing, the landlord's legal counsel requested an adjournment of the tenants' application as the landlord understood that the tenants had received a sizeable payment

from their insurance company for the same items that gave rise to the tenants' current application for a monetary award of \$34,998.00 against the landlord. The landlord's legal counsel claimed that the current application may very well involve an attempt by the tenants to obtain a dual payment from the landlord for the same damage for which the tenants had already been compensated by their insurance company. The landlord's legal counsel asserted that the tenants had chosen to accept this payment in lieu of undertaking repairs to the manufactured home and applied it towards the purchase of a new truck for Tenant DE (the tenant). The landlord's legal counsel maintained that without considerably more evidence as to the actual costs and losses incurred by the tenants in undertaking repairs to the manufactured home, the landlord would be unable to adequately respond to the case presented by the tenants in the current claim for dispute resolution.

Issues(s) to be Decided

Are any of the issues identified in the tenants' application properly before me? If so, is the tenants' application premature?

Preliminary Issue – Are any of the Issues Identified in the Tenants' Application Included in a Previous Final and Binding Decision of Another Arbitrator Appointed under the Act?

At the commencement of the hearing, I confirmed that a final and binding decision (referenced in the first page of this decision) regarding this tenancy had been issued by another Arbitrator appointed under the Act on February 14, 2018. In a hearing attended only by the landlord, the landlord was granted a two day Order of Possession and a monetary award of \$5,190.00 for unpaid rent and the recovery of the landlord's filing fee for that application. In that February 14, 2018 decision, the Arbitrator made the following final and binding decision:

Once a tenant is served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to pay the rent in full or dispute the notice by filing and serving the landlord with an Application for Dispute Resolution. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the manufactured home site within 10 days of receiving the notice.

In this case, I accept the undisputed testimony of the landlord that the tenant has not paid any rent since the notice was issued and has not served the landlord with an Application for Dispute Resolution, and I have no such application before me. Therefore, I find that the tenant is conclusively presumed to have accepted

the end of the tenancy and the landlord is entitled to an Order of Possession. Since the effective date of vacancy has passed, I grant the Order of Possession on 2 days notice to the tenant.

The landlord's legal counsel and the landlord said that the landlord had not yet served the 2 Day Order of Possession granted on February 14, 2018, but intended to do so within the next 24 hours.

Although the 2 Day Order of Possession has not been served to the tenant, a final determination has been made by another Arbitrator that this tenancy ended on the effective date cited on the landlord's 10 Day Notice, January 11, 2018.

A final and binding decision has been made that this tenancy ended well in advance of the tenants' February 21, 2018 application for dispute resolution. For this reason, I find that the legal doctrine of *res judicata* prevents me from considering those aspects of the tenants' application that pertain to the ongoing tenancy.

Res judicata prevents a plaintiff from pursuing a claim that already has been decided and also prevents a defendant from raising any new defence to defeat the enforcement of an earlier judgement. It also precludes relitigation of any issue, regardless of whether the second action is on the same claim as the first one. Former adjudication is analogous to the criminal law concept of double jeopardy.

As I have no authority to make findings on matters that have already been decided by another Arbitrator, I dismiss the tenants' applications for the following,

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 59;
- cancellation of the landlord's 10 Day Notice pursuant to section 39;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 55; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 63.

To consider any of these items would involve interference with the previous Arbitrator's decision that this tenancy ended on the effective date identified on the landlord's 10 Day Notice.

Preliminary Issue- Consideration of Landlord's Request for an Adjournment

Residential Tenancy Branch Rules of Procedure provide guidance on the criteria that must be considered for granting an adjournment. Rule 7.9 explains, "Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment."

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

Section 7 of the *Act* requires a party to take suitable measures to mitigate the other party's exposure to losses. In this case, the tenants have pursued a claim with their insurance company, a reasonable means of fulfilling at least part of this duty to mitigate their losses.

In considering the reasons presented by the landlord's legal counsel for the requested adjournment, I asked the tenants to explain the current status of their insurance claim and of the repairs to their manufactured home.

The tenant DE confirmed that they had been compensated \$19,000.00 for the damage caused by a tree which fell on the tenants' manufactured home in late December 2017, the same incident which initiated the tenants' claim for a monetary award of \$34,998.00. The tenant testified that significant expenses that the tenants anticipate having to incur, including the replacement of their oil heater have not been undertaken due to the inclement weather. The tenant confirmed that the only receipts they had presented thus far were receipts for increased hydro payments for the space heaters they have used to dry the interior of the manufactured home and keep it heated as the oil heater was unusable after the tree fell on the manufactured home. The tenant offered to provide additional receipts over the next month if an adjournment were granted.

In considering the requested adjournment, it became apparent that many of the expenses for which the tenants were seeking compensation from the landlord had not yet been incurred. While the landlord's counsel maintained that the tenants have used the repair payment provided by the tenants' insurance company to purchase a new

truck, the terms of the insurance company's payment remain unclear as does much of the tenants' claim for compensation from the landlord.

Under these circumstances and as the landlord's legal counsel advised that there are plans to serve the tenants with the 2 Day Order of Possession granted in the previous hearing within the next 24 hours, I find that the tenants' application is premature. The true costs of repairs to the manufactured home and the tenants' losses beyond the payment already received from the tenants' insurance company are very uncertain at this time.

Although I have considered adjourning the tenants' current application, I find that the more suitable remedy is to dismiss the monetary aspects of the tenants' application with leave to reapply. I do so as I find that so much has changed since the tenants' submitted their application that the current situation, and for that matter the situation as it may exist before this decision can even be issued, bears little resemblance to the tenants' original application.

Should the tenants decide to pursue a new application for dispute resolution against the landlord once all of their expenses to repair their manufactured home have been completed, they are advised that they will need to present full information as to the payment they have already received from their insurance company for the damage caused by the fallen tree in December 2017. The tenants would only be eligible for expenses incurred beyond those for which they have already been compensated by their insurance company.

The parties are advised that they will need to submit a new evidence package for any evidence that they wish to be considered with respect to a new application from the tenants.

Conclusion

I dismiss the tenants' application for the following items without leave to reapply:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 59;
- cancellation of the landlord's 10 Day Notice pursuant to section 39;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 55; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 63.

I dismiss the tenants' application for the following items with leave to reapply:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 60;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 27;

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: April 12, 2018

Residential Tenancy Branch