



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC; FF

Introduction

This matter was convened on June 13, 2018, and reconvened on June 21, 2018. An Interim Decision was rendered on June 19, 2018, which should be read in conjunction with this Decision.

This is the Tenant's Application for Dispute Resolution seeking compensation under the Act, regulation or tenancy agreement and to recover the cost of the filing fee from the Landlord.

Both of the parties attended and gave affirmed testimony at the Hearing which took place by teleconference.

It was determined that the Tenant and the Landlord exchanged the additional documentary evidence that I ordered the parties to provide to me and to each other.

Issue(s) to be Determined

Is this a Residential Tenancy Act matter, or a Manufactured Home Park Tenancy Act matter?

Is the Tenant entitled to compensation for lack of potable water at the rental property?

Background and Evidence

On June 2 and July 12, 2016, the parties attended a Hearing with respect to this tenancy. The Tenant applied to dispute an additional rent increase; for an Order to cancel a One Month Notice to End Tenancy for Cause; and for an Order to cancel a 10 Day Notice to End Tenancy for unpaid rent or utilities. On July 12, 2016, the Arbitrator rendered her decision. The Arbitrator declined to accept jurisdiction because "the relationship between the parties is that of seller and purchaser of real estate and not that of landlord and tenant."

On October 23 and November 27, 2017, the parties appeared before a Judge of the Provincial Court of British Columbia. The Tenant sought an Order for damages for breach of contract in

the equivalent amount of money that he paid towards a Rental Purchase Agreement entered into on September 1, 2000.

On December 15, 2017, the Honourable Judge gave his Reasons for Judgment. The Reasons explained that the parties had entered into a purchase agreement for the manufactured home that the Tenant continues to reside in; however, the Landlord had accepted the Tenant's purchase funds, but also sold the home to another party. As a result, the Tenant was awarded a total amount of \$19,500.00, which was due immediately, but could be deducted from rent due to the Landlords. The Landlords were found to be owners of the manufactured home currently occupied by the Tenant and therefore had to return the purchase funds to the Tenant. In addition, the Honourable Judge wrote that he "expects the Residential Tenancy Branch to re-assume jurisdiction to resolve future disputes related to the tenancy". Monthly rent was set as "\$322 commencing January 1, 2018, in addition to the current monthly pad rent". The parties agree that the current pad rent is \$231.55. Therefore, the total rent per month is \$553.55.

The Tenant submitted that he is bringing this Application under the Manufactured Home Park Tenancy Act because he is "applying for recovery of site rent paid from when the Court found he owned the trailer [June, 2011] to the date of the Provincial Court Decision [December 15, 2017]".

The Tenant submitted that it is "illegal to charge or collect rent after August 4, 2011, because no potable water was supplied as required by law". The Tenant provided copies of portions of the Health Hazards Regulation and Drinking Water Protection Act. He also provided copies of printouts from Interior Health Water Notifications and Boil Water Advisories for the location of the Manufactured Home Park. The Tenant also provided photographs of the location of the well. The Tenant seeks compensation in the total amount of \$13,000.00 (65 months @ \$200.00 per month).

The Landlord testified that "a year ago", he installed a "state of the art" well and pump house at the Park. He testified that the water is potable at the Park and that he had it tested most recently on May 15, 2018. The Landlord provided a copy of a printout from Interior Health entitled "Sampling Results", which shows an "acceptable" reading for Coliform and E. coli taken on May 15, 2018, from "Random Tap (Well ID Plate #35176)". The Landlord testified that he drew the water himself and took it in for testing.

The Tenant submitted that the printout provided by the Landlord does not indicate where the sample was taken. The Tenant stated that unless water is drawn from an outside tap that has run for ½ an hour and is drawn from two spots (100 feet from the tap and then at the end of the line), there is no guarantee that the sample will be accurate. The Tenant stated that the tests failed in August, 2011 and that the water has not been potable since. The Tenant testified that only once the samples come back clear of contamination does the rating "fall off" the notifications screen.

I asked the Tenant why he did not draw his own water sample and take it in for testing. He stated that Interior Health would have just “dumped it out”. He testified that he knows this because another occupant of the Park took a sample in and the “water people said they already had a sample from the Park and just dumped it out”.

The Tenant’s documents show the following results:

Interior Health Water Notifications, August 4, 2011, Boil Water Notice

Boil Water Advisory, “active”, issued 8/25/2017, for “Source water contamination 8/4/2011

The Landlord testified that he has been working with Interior Health and is finalizing his “emergency response plan” for the Park. He testified that once he has finished finalizing his plan, then Interior Health will take the boil water advisory off its Notifications screen.

Analysis

During the course of the Hearing on June 13, 2018, I determined that this is a matter under the jurisdiction of the Residential Tenancy Act, rather than under the Manufactured Home Park Tenancy Act. Although the parties “recognized that the Rental Purchase Agreement [of the manufactured home] had been completed and they governed themselves accordingly for several years”, pursuant to the Provincial Court Decision and Orders dated December 15, 2017, effective “January 1, 2018, [the relationship] will revert back to one of landlord and tenant..... the rent that the claimant will pay to the defendants as current landlords will be \$322 per month plus pad rent, commencing January 1, 2018.”. In other words, the Tenant is renting the manufactured home (\$322.00) and the site (\$231.55) together from the same owner/landlord, for a total of \$553.55 per month. The Manufactured Home Park Tenancy Act relates to tenancies where the tenant is renting the site only, and owns the manufactured home. The Tenant’s Application was amended accordingly.

This was a very difficult Hearing. There were issues of credibility with respect to both party’s testimony. However, this is the Tenant’s Application and therefore the onus is on the Tenant to provide sufficient evidence, on the balance of probability, to prove his claim.

I find that the Tenant did not provide sufficient evidence that the water at the Park is not potable as at January 1, 2018. In any event, the Tenant’s claim was for damages that occurred between August, 2011 and December, 2017.

Paragraphs 5 and 7 of the Order contained in the Provincial Court Judgment provide:

5. [The Tenant] **is now** a tenant of [the Landlords] and is renting the Manufactured Home from them and is responsible for monthly rent in the amount of \$322 **commencing January 1, 2018**, in addition to the current monthly pad rent.

7. This court expects the Residential Tenancy Branch to re-assume jurisdiction to resolve any **future disputes** related to the tenancy.

[Reproduced as written. My emphasis added.]

I find that the Provincial Court Judge returned jurisdiction of this tenancy to the Residential Tenancy Branch effective January 1, 2018, and that any matters of contention prior to that date should have been brought up before the Provincial Court Judge.

The Tenant has not been successful in his Application and I find that he is not entitled to recover the cost of the filing fee from the Landlord.

Conclusion

The Tenant's Application is dismissed in its entirety, without leave to reapply.

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: June 28, 2018

Residential Tenancy Branch