



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VISTA VILLAGE TRAILER PARK LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL, MNRL, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution wherein the Landlord requested monetary compensation from the Tenant and to recover the filing fee.

The hearing was conducted by teleconference at 1:00 p.m. on July 3, 2018. Only the Landlord called into the hearing. She gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 1:39 p.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference.

As the Tenant did not call in, service of the Landlord's hearing package was considered. The Landlord testified that she served the Tenant with the Notice of Hearing and the Application on December 13, 2017 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

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.

Additionally and pursuant to section 90 of the *Residential Tenancy Act* documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of December 18, 2017. The Landlord also stated that she also hired a process server to

personally serve the Tenant on May 22, 2018. In all the circumstances I find the Tenant was served with Notice of this hearing and I therefore 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 Landlord/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.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord testified that this tenancy began February 1, 2013. Monthly rent was initially \$385.00 and after yearly rent increases the rent paid was \$411.00 per month.

By Decision dated January 7, 2016 the Landlord was granted an Order of Possession (the file number is noted on the unpublished cover page of this my Decision). The Landlord stated that the Tenant abandoned the manufactured home in March of 2016.

At the hearing on January 7, 2016, the Landlord was also granted a Monetary Order in the amount of \$1,335.00 which the Tenant later paid. Initially when the Landlord first made the application before me she claimed the full amount which was amended and reduced to reflect the \$1,335.00 payment.

The Landlord filed a Monetary Orders Worksheet wherein she confirmed that she sought monetary compensation for the following:

Rent and storage, and late fees from December 2015 to May 2018	\$10,167.00
Demolition fee in May 2018	\$3,465.00
Inventory and clean-up of manufactured home site	\$255.00
Administration fee costs (Manufactured home and personal property searches, registered letters, skip tracing)	\$243.61
Legal notice of abandonment (published in newspaper)	\$115.58
Affidavit of abandonment (charged by the Minister of Finance)	\$50.00
Registered mail costs	\$9.00
Filing fee	\$100.00
TOTAL CLAIMED	\$14,405.19

The Landlord provided a summary of rent owing invoice for the rent, storage fees, NSF fees and late fees in the amount of \$10,680.00 as of February. She confirmed that further charges were incurred to May of 2018, and some payments were made such that at the time of the hearing the amount of \$10,167.00 was owed for these amounts.

The Landlord testified that the Tenant abandoned the rental unit in March of 2016 and then communicated that he intended to move the manufactured home. She then “had to start the process all over again”.

In a letter dated October of 2017 (which was provided in evidence) she informed the Tenant that he should move his manufactured home before the winter due to the snow. The Tenant then abandoned the manufactured home again. She then proceeded with the abandonment process and was able to demolish it in May of 2018. She sought compensation for these costs as well.

The Landlord confirmed that this process was further complicated by the fact that the Tenant “kept skipping town” and she had to hire skip tracers to find him to serve him legal documents and otherwise deal with his manufactured home. As noted in the above table, she claimed “Administration fee costs” which she further particularized as: manufactured home and personal property searches, registered letters, skip tracing; she confirmed that of the amounts claimed, \$27.00 was for registered mail costs.

Documentary evidence submitted by the Landlord confirmed that she incurred the amounts claimed in her Application.

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 *Manufactured Home Park Tenancy Act*, Regulation, and Residential Tenancy Policy Guidelines, can be accessed via the website:

www.gov.bc.ca/landlordtenant.

In a claim for damage or loss under section 60 of the *Act* or the 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. In this case, the Landlord has the burden of proof to prove their claim.

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 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.

After consideration of the Landlord's undisputed testimony and evidence and on a balance of probabilities I find as follows.

I find the Tenant failed to remove his manufactured home as required by the Decision of January 6, 2016. The Tenant is responsible for the unpaid rent and NSF fees as well as the storage fees relating to over-holding his tenancy. I also accept the Landlord's testimony that the process of removing the manufactured home was complicated by the fact the Tenant attempted to regain possession of the home after it appeared abandoned, evaded service of legal documents, and then abandoned the home a second time. Had the Tenant simply moved the home as required by the Order of Possession the Landlord would not have incurred such high costs.

Further, as the Tenant failed to abide by the Order of Possession, the Landlord incurred the administrative costs to treat the manufactured home as abandoned. While registered mail costs are not recoverable under the *Act*, the other related out of pocket expenses are.

Finally, I accept the Landlord's evidence as to the need to demolish the manufactured home as well as to clean the site and prepare the required inventory. I therefore award her compensation for these related costs.

I accept the Landlord's evidence that she was required to post a Legal Notice of Abandonment in the local newspaper as well as swear an Affidavit of Abandonment in relation to the disposition of this manufactured home; and I award her the related costs.

As the Landlord has been substantially successful, I award her recovery of the \$100.00 filing fee.

Conclusion

The Landlord is entitled to a Monetary Order in the amount of **\$14,369.19** calculated as follows:

Rent and storage, and late fees from December 2015 to May 2018	\$10,167.00
Demolition fee May 2018	\$3,465.00
Inventory and clean-up of manufactured home site	\$255.00
Administration fee costs (Manufactured home and personal property searches and skip tracing)	\$216.61
Legal notice of abandonment (published in newspaper)	\$115.58
Affidavit of abandonment (charged by the Minister of Finance)	\$50.00
Filing fee (Residential Tenancy Branch)	\$100.00
TOTAL AWARDED	\$14,369.19

The Landlord is granted a Monetary Order in the amount of **\$14,369.19**. This Order must be served on the Tenant and should the Tenant not pay, the Order may be filed 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: July 6, 2018

Residential Tenancy Branch