Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MT, MNDCT, OLC, FFT

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 to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 39;
- compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 60;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 55; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 65.

The landlord's agent (the landlord) and Tenant C.L. 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 cross-examine one another. Tenant C.L. (the tenant) indicated that they were representing the interests of both tenants.

The tenant testified that they sent the landlord a copy of the Application for Dispute Resolution (the Application) and evidence by registered mail. The tenant was not able to provide a copy of the Canada Post tracking number to confirm this registered mailing.

The landlord testified that they were never served with the Application or the evidence and only became aware of the hearing when they got an e-mail reminder for submitting evidence from the Residential Tenancy Branch (RTB), just prior to the hearing. The landlord submitted that they had to call the RTB to attain the hearing information in order to participate in this hearing.

Preliminary Matters

At the outset of the hearing the tenant admitted that they already had a hearing regarding the 10 Day Notice and a judgement had been issued in the landlord's favor. The tenant stated that they were just looking for more time to sell the manufactured home in response to the Order of Possession the landlord had obtained.

Res judicata prevents a plaintiff from pursuing a claim that already has been decided and also prevents a defendant from raising any new defense to defeat the enforcement of an earlier judgment. The rule provides that when a court of competent jurisdiction has entered a final judgement on the merits of a cause of action, the parties to the suit are bound not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose. A final judgment on the merits bars further claims by the same parties based on the same cause of action.

I find that the tenant's Application to cancel the 10 Day notice and for more time to cancel the notice is *res judicata,* meaning the matter has already been conclusively decided and cannot be decided again.

For the above reason, I decline jurisdiction to hear the tenant's Application to dispute the 10 Day Notice and for more time to cancel the notice.

Issues(s) to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application from the landlord pursuant to section 65 of the *Act*?

Background and Evidence

This manufactured home park tenancy began on May 22, 2014, with a current monthly pad rent of $287.00, payable on the 1st day of each month.

The tenant stated that they are seeking compensation for a plumbing bill as the point of the blockage was beyond the tenant's site. The tenant stated that they were initially going to pay for the plumber and share the cost with another affected neighbor but upon

learning where the blockage was they filed an Application against the landlord. The tenant stated that, although the blockage was caused by the tenants and the occupants of another pad, it was their position that the landlord was responsible for the repairs due to where the blockage was.

The landlord stated that, although they had not received the evidence, they were present when the plumber was in attendance and the tenant stated at the time that they would pay for it. The landlord stated that the tenant had asked for a recommendation for a plumber but that when the landlord's plumber attended the rental unit, the tenant did not answer the door. The landlord stated that the tenant hired their own plumber to do the emergency repair and that the blockage was due to hair and grease, not due to any issue with the landlord's sewage system.

Analysis

In this type of matter, the tenant must prove they served the tenant with the Application, with all the required inclusions as indicated on the Notice as per subsections 82 (1) of the *Act* which permit service leaving a copy with the person or "by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord." The definition of registered mail is set out in section 1 of the *Act* as "any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available."

I find that the tenant has not demonstrated that they served the landlord with the Application or the evidence and that the landlord is prejudiced by this as they did not have a chance to respond to the Application or the evidence.

Based on a balance of probabilities, I find that the landlord was not served with the tenants' Application or evidence and I dismiss the Application, without leave to reapply.

Even if the tenant had proven service of the Application and evidence, section 27 (3) of the Act regarding emergency repairs requires that the tenant allows the landlord reasonable times to make the repair. I would have found that the tenant indicated to the landlord that they were going to pay for the repair on their own with the neighbor and in doing so did not give the landlord a chance to perform the repair themselves and allow the landlord to use their own plumber.

I would have further found that, pursuant to section 6 of the Act, the emergency repairs are for damage caused primarily by the actions or neglect of the tenants due to the hair and grease which was the cause of the blockage and not due to any fault in the

landlord's sewage system. I would have dismissed the tenants' application based on these stated and undisputed facts.

Conclusion

The tenants' Application is dismissed, 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: October 22, 2018

Residential Tenancy Branch