Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing was convened pursuant to an Application for Dispute Resolution, made on April 9, 2018, as amended by an Amendment to an Application for Dispute Resolution, received at the Residential Tenancy Branch on April 11, 2018 (the "Application"). The Tenant applied for the following relief, pursuant to the *Manufactured Home Park Tenancy Act* (the "*Act*"):

- a monetary order for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee.

The Tenant and the Landlord attended the hearing at the appointed date and time, and provided affirmed testimony.

The Tenant testified that the Landlord was served with the Application package and Amendment to an Application for Dispute Resolution by registered mail. The Landlord confirmed receipt. Pursuant to section 64 of the *Act*, I find these documents were sufficiently served for the purposes of the *Act*.

In addition, the Tenant testified he served the Landlord with additional documentary evidence by providing the Landlord's spouse with a copy. The Landlord denied receipt of this documentation, and the Tenant did not submit documentary evidence in support of service in this manner. In addition, I note the documentary evidence was submitted to the Residential Tenancy Branch on October 16, 2018, contrary to the Rules of Procedure. Accordingly, this documentary evidence has not been considered further in this Decision.

The Landlord did not submit documentary evidence in response to the Application.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence put before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The parties agreed the Tenant moved into the manufactured home park on or about September 1, 2010. The Tenant vacated the manufactured home park in November 2017, but continued to pay pad rent until January 31, 2018. According to the Tenant, pad rent from September 1, 2010 to September 30, 2016 was $225.00 per month, whereas pad rent from October 1, 2016 to January 31, 2018 was $300.00 per month. The Landlord did not dispute the Tenant's evidence regarding pad rent.

The Tenant claims the Landlord did not provide potable water during the tenancy. As a result, the Tenant seeks compensation in the amount of $18,300.00, which amounts to a full refund of rent during the period in question. However, while considering the Tenant's submissions, a minor calculation error was noted. Although $13,500.00 was been claimed from September 1, 2011 to September 30, 2016, a period of 61 months, the corrected figure is $13,725.00 ($225.00 per month x 61 months). In addition, the Tenant claimed $4,800.00 from October 1, 2016 to January 31, 2018, ($300.00 per month x 16 months).

The Tenant's submissions were brief. He suggested he is entitled to a full refund of rent during the above periods because the Landlord did not provide potable water as required by legislation. The Tenant cited what he believed to be the *Drinking Water Protection Act*, but was actually referring to section 7(2) of the Health Hazards Regulation, which states:

> *A landlord must not rent a rental unit that is not connected to a water supply system unless the landlord can provide the tenant with a supply of potable water for domestic purposes.*
>
> [Reproduced as written.]

The Tenant submitted that the Landlord did not provide potable water and that rent was therefore not due.

In reply, the Landlord acknowledged that a boil water advisory was in effect for much of the tenancy. However, he testified that a new well was installed roughly two years ago, reducing problems with the quality of the water.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 60 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 60 of the *Act.* An applicant must prove the following:

1. That the other party violated the *Act,* regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act,* regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

In this case, I find there is insufficient evidence before me to conclude the Landlord breached the *Act*, regulation or tenancy agreement. The director's jurisdiction is limited to the *Manufacutred Home Park Tenancy Act* and Regulation. Although I was referred to the Health Hazards Regulation, reproduced above, I was not referred to any of the *Act*, regulation, or tenancy agreement as a basis for the Tenant's claim.

In addition, I am not satisfied the Tenant suffered a loss. Although the parties acknowledged a boil water advisory was in effect during much of the tenancy, the Tenant did not submit sufficient evidence of his loss. For example, the Tenant did not provide evidence regarding the potential decreased value of the tenancy or of financial losses incurred to obtain an alternate and potable source of water.

Further, section 7 of the *Act* confirms that:

> *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this* Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*
>
> [Reproduced as written.]

I find there is insufficient evidence before me to conclude the Tenant did what was reasonable to minimize any loss. Indeed, the Tenant testified the boil water advisory was in effect for roughly 7-1/2 years. However, it was not clear that the Tenant raised his concerns to the Landlord or made an application for dispute resolution during the tenancy. Rather, the Tenant did not submit his Application until April 9, 2018, after the tenancy had come to an end.

Based on the above, I find that the Tenant's Application is dismissed, without leave to reapply.

Conclusion

The Tenant's 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