



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, OLC, LRE, FFT

Introduction

This decision is in respect of the tenant's application for dispute resolution under the *Manufactured Home Park Tenancy Act* (the "Act"). The tenant seeks the following remedies:

1. compensation for damage caused to the tenant's two motor vehicles;
2. an order for the landlord to comply with the Act, regulations or the tenancy agreement;
3. an order that the landlord's right to enter the site is suspended or has conditions set on said entry; and,
4. compensation for recovery of the filing fee.

A dispute resolution hearing was convened, and the landlord and the tenant attended, were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The parties did not raise any issues in respect of service.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure* and to which I was referred, only evidence relevant to the issues of this application are considered in my decision.

Issues to be Decided

1. Is the tenant entitled to compensation for damage caused by the landlord to the tenant's two motor vehicles?
2. Is the tenant entitled to an order for the landlord to comply with the Act, regulations or the tenancy agreement?

3. Is the tenant entitled to an order that the landlord's right to enter the site is suspended or has conditions set on said entry?
4. Is the tenant entitled to compensation for recovery of the filing fee?

Background and Evidence

The tenant testified that on August 13, 2018, the manufactured home park's manager and "a young fellow" parked their vehicles across the road from the tenant's home, and the two individuals suited up for weed whacking. Weed whacking ensued.

The next day, the tenant looked out of his window and observed the young fellow whacking weeds on the neighbour's land, and then proceeded to whack weeds alongside the tenant's two motor vehicles, damaging the vehicles. The person "went up and down the vehicles," causing significant damage. He noted that his driveway is gravel, which made the damage worse. The tenant contacted the police and filed a police report. Had the tenant been told that weed whacking was to occur on the dates in question, he would have moved the vehicles.

These two damaged vehicles were then taken to two autobody repair shops, and the tenant obtained two quotes related to the repair of the vehicles. The tenant submitted into evidence copies of the quotes. He noted that the autobody shops told him the damage was consistent with a weed whacker damaging the vehicles.

Finally, the tenant testified that the weed whacking was malicious, and that what he seeks, in addition to compensation, is an order for his peace of mind, and that he wants his right to quiet enjoyment to be upheld. He testified about an earlier incident involving the landlord being "mad and drunk" and that the landlord harassed the tenant's dog, and then attacked his car.

The landlord testified that while they were weed whacking across the street, they did not cause the vehicle damage as alleged by the tenant, and were never on the tenant's property (that is, the site). She noted that every couple of years the tenant will try something, that his claim is "preposterous," and that he is "trying to scam us."

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act states that if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement, an arbitrator may determine the amount of, and order that party to pay, compensation to the other party.

In deciding whether compensation is due, I must apply the following four-part test:

1. Has a party to a tenancy agreement failed to comply with the Act, the regulations, or the tenancy agreement?
2. If yes, did loss or damage result from that non-compliance?
3. Has the party who suffered loss or damage proven the amount or value of that damage or loss?
4. Has the party who suffered the loss or damage that resulted from the other's non-compliance done whatever is reasonable to minimize the damage or loss?

In this case, the tenant testified and argued that the landlord caused property damage to his Chrysler and Pontiac vehicles. The landlord disputes that they caused any property damage to the vehicles. The tenant did not provide any evidence, photographic, video, or witness testimony, that would have established that the landlord (or an agent of the landlord, such as the young weed whacker fellow) caused the damage to the vehicles. While the quotes from the autobody shops prove that the two vehicles require repairs, these quotes do not establish a link between the landlord and the damage.

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, I find that the tenant has failed to provide any additional evidence that the landlord, or the landlord's agent, proving that the landlord caused the damage.

Taking into consideration all the oral testimony and documentary evidence presented

before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving their claim for compensation. As such, I need not consider the remaining parts of the four-part test, above. I therefore dismiss this aspect of the tenant's claim without leave to reapply.

Section 63 of the Act states that "If the director is satisfied that a landlord is likely to enter a manufactured home site other than as authorized under section 23 [. . .], the director may suspend or set conditions on the landlord's right to enter the manufactured home site."

In this case, while there is undoubtedly animosity between the parties (at least from the tenant's perspective), the tenant did not provide any evidence establishing that the landlord is likely to enter the tenant's manufactured home site other than as authorized under the Act. Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving his claim that he is entitled to an order under section 63 of the Act. As such, I dismiss this aspect of his claim without leave to reapply.

Section 55(3) of the Act states that "The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement."

In this case, the tenant did not provide any evidence that the landlord was, or is, failing to comply with the Act, the *Manufactured Home Park Tenancy Regulation*, or the tenancy agreement. While the tenant did testify that the landlord yelled at him at one point, and harassed his dog, he provided no details, dates, or any other information that may have established the landlord's breach of the Act, the regulation, or the tenancy agreement.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving his claim that he is entitled to an order under section 55 of the Act. As such, I dismiss this aspect of his claim without leave to reapply.

As the tenant was unsuccessful in his application, I dismiss his claim for compensation for recovery of the filing fee.

Conclusion

I hereby dismiss the tenant's application 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 Act.

Dated: November 13, 2018

Residential Tenancy Branch