



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC MNDC

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution made on September 18, 2018, as amended by an Amendment to an Application for Dispute Resolution dated November 5, 2018 (the "Application"). The Tenants applied for the following relief pursuant to the *Residential Tenancy Act*:

- an order cancelling a One Month Notice to End Tenancy for Cause, dated October 1, 2018 (the "One Month Notice"); and
- a monetary order for money owed or compensation for damage or loss.

As noted below, the tenancy involved a recreational vehicle parked on the Landlord's property. Cable, internet, water, electrical and sewer hookups are included in the monthly rent payment. No security deposit was paid. Accordingly, I find it appropriate to find that the Application should have been brought under the *Manufactured Home Park Tenancy Act* (the "Act"). The Application is amended accordingly.

The Tenants attended the hearing on their own behalves. The Landlord attended the hearing and was represented by K.N., legal counsel. The parties provided affirmed testimony.

The Tenants testified that Landlord was served with the Application package and the Amendment to an Application for Dispute Resolution in person. On behalf of the Landlord, K.N. acknowledged receipt and confirmed the Landlord had sufficient time to review and consider these documents. Pursuant to section 71 of the Act, I find the Application package and the Amendment to an Application for Dispute Resolution were sufficiently served for the purposes of the Act.

The Landlord submitted documentary evidence in response to the Application. The Landlord testified it was served on the Tenants by leaving a copy at the Tenants' residence. The Tenants testified the evidence was not received until the date of the hearing, and submitted it would be unfair to consider it during the hearing. Rule of Procedure 3.15 confirms that a respondent's documentary evidence must be served on the applicant and submitted to the Residential Tenancy Branch not less than 7 days before the hearing. In this case, I find the Landlord's documentary was served late, contrary to Rule of Procedure 3.15, and the Tenants have not had sufficient opportunity to review and consider it. Accordingly, I find that the Landlord's evidence is excluded. It has not been considered further in this Decision.

The parties were given an 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 before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

At the outset of the hearing, the Tenants advised they intend to vacate the rental property on November 22, 2018, at 3:00 p.m. Pursuant to section 63 of the Act, the parties agreed as follows:

1. The parties agree the tenancy will end on November 22, 2018, at 3:00 p.m.
2. The Tenants agree to vacate the rental property by November 22, 2018, at 3:00 p.m.

In support of the settlement of this issue, and with the agreement of the parties, the Landlord is granted an order of possession, which will be effective on November 22, 2018, at 3:00 p.m. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

Issue to be Decided

Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss.?

Background and Evidence

The parties agreed the agreement between them was not reduced to writing. However, the parties did agree that the Tenants moved their recreational vehicle onto the Landlord's property in the summer of 2017. The Tenants pay \$500.00 per month to the Landlord, which includes cable, internet, water, electrical and sewer hook-ups. The Tenants did not pay a security deposit.

The Tenants seek compensation for losses incurred due to an "electrical fire" on October 13, 2018, which resulted in a loss of power to the Tenants' recreational vehicle.

The Tenants' claim was summarized in a Monetary Order Worksheet, dated November 5, 2018. The items claimed were elaborated upon in an attached worksheet. First, the Tenants claimed \$35.83 to repair their recreational vehicle, although the Tenants testified they have not replaced the part due to financial issues. A Part Sales Quote, dated October 17, 2018, was submitted in support.

Second, the Monetary Order Worksheet disclosed a claim of \$17.48 for ice to keep their food cold as the fridge in their recreational vehicle did not function without electricity. A receipt for the amount indicated on the Monetary Order Worksheet was submitted in support.

Third, the Tenants claimed \$55.98 for a butane stove and canister for cooking. A receipt was submitted in support.

Fourth, the Monetary Order Worksheet disclosed a claim of \$2.99 for drinking water. However, the Tenants testified they were seeking this amount on a daily basis for 30 days. A receipt for the amount indicated on the Monetary Order Worksheet was submitted in support.

Fifth, the Tenants claimed \$300.00 in compensation. They testified this reflects half a month's rent due to the loss of services included with the tenancy agreement.

In reply, K.N. submitted that the problem arose due to the age and condition of the Tenants' recreational vehicle. In any event, K.N. confirmed that the Landlord immediately provided the Tenants with an alternate source of electricity. However, K.N. acknowledged that all sources of power to the recreational vehicle were disconnected on November 1, 2018, in compliance with directions from a local by-law officer.

Analysis

Based on the oral testimony and documentary evidence, 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 67 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 Tenants 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 Tenants must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenants did what was reasonable to minimize the damage or losses that were incurred.

The Tenants claims were not well articulated. However, after careful consideration of the parties' evidence and submissions, I find there is insufficient evidence before me to conclude the Tenants are entitled to the relief sought. In particular, I am not satisfied that the lack of electricity to the Tenants' recreational vehicle was caused by the Landlord. Indeed, the Tenants confirmed that repairs were needed to the recreational vehicle, although these repairs were not completed at the time of the hearing. However, the Tenants testified they did purchased water, ice, and a stove to prepare food.

Further, I note the Tenants did not submit receipts for all the alleged purchases. Accordingly, I find I cannot be satisfied with respect to the amount of the Tenants' losses.

In addition, I find there is insufficient evidence before me to conclude the Tenants are entitled to recover compensation for a loss of services.

However, despite the above findings, it was not disputed that the Landlord disconnected services provided to the Tenants under the terms of the tenancy agreement. The services were disconnected by the Landlord on November 1, 2018, after receiving notice of his breach of local by-laws and subsequent fines. Accordingly, I find the Landlord breached the tenancy agreement and the *Act*, and that the Tenants have suffered losses as a result. Although difficult to quantify, Policy Guideline #16 states:

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

- *“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.*

[Reproduced as written.]

In this case, I find the Tenants are entitled to nominal damages in the amount of \$250.00. Pursuant to section 60 of the *Act*, and Policy Guideline #16, the Tenants are granted a monetary order in the amount of \$250.00.

Conclusion

As noted above, the parties agreed during the hearing that the tenancy would end on November 22, 2018, at 3:00 p.m. Accordingly, in support of the settlement of this aspect of the claim, and with the agreement of the parties, the Landlord is granted an order of possession, which will be effective on November 22, 2018, at 3:00 p.m. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Tenants are granted a monetary order in the amount of \$250.00. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: November 26, 2018

Residential Tenancy Branch