



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TIKENICOL ENT.LTD. DBA PINES MOBILE HOME PARK
GEORGE HENRY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes LRE MNDCT

Introduction

This hearing dealt with the tenants' application pursuant to the *Manufactured Home Park Tenancy Act* (the "Act") seeking:

- A monetary order pursuant to section 60; and
- An order restricting the landlord's right to enter the rental suite pursuant to section 63.

Both parties 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. The corporate landlord was represented by the owner KB (the "landlord") who primarily spoke on behalf of the landlord. The tenant represented herself with the assistance of an advocate.

As both parties were present service of documents was confirmed. The landlord confirmed receipt of the tenant's application dated November 5, 2018 and evidence. The tenant confirmed receipt of the landlord's evidence. Based on the testimonies of the parties I find that they were each served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

Should restrictions be placed on the landlord's right to enter the rental property?

Background and Evidence

While I have turned my mind to all the evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

The tenant began residing in the rental unit on or about February, 2015. The current monthly rent is \$331.50 payable on the first of each month. There was a previous tenancy agreement between the landlord and the tenant's mother from about 2002 and the tenant assumed the tenancy agreement when the mother passed away in 2015. No new written tenancy agreement was signed but the tenant has been paying the full amount of the monthly rent to the landlord since that time.

The tenant seeks a monetary award of \$35,000.00 representing damages and loss for what they characterize as harassment from the landlord. The tenant gave evidence that the landlord has issued notices to keep the property clean despite the property being kept immaculate. The tenant described the park manager as aggressive and threatening to throw her out of the park. The tenant submitted letters from family members and former park residents in support of her position that she has been unfairly targeted by the landlord and the effect it has had on her well-being.

The tenant testified that they have contacted the police to file complaints against the park manager. The tenant submits that the landlord has issued notices to her by mail, registered mail and by posting on the door.

The landlord disputes the tenant's evidence and submits that they have not engaged in targeted harassment. The landlord said that any notice issued is for breaches of park rules or when another occupant of the park makes a complaint. The park manager said that they have not entered the tenant's rental site for anything other than those reasons permitted under the *Act*.

Analysis

In accordance with Residential Tenancy Rules of Procedure 6.6 the onus is on the applicant bringing the claim to prove their case on a balance of probabilities.

Section 60 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their loss.

The tenant did not articulate the basis for their claim in a clear and cogent manner but I find that the tenant seeks a monetary award on the basis of loss of quiet enjoyment pursuant to section 28 of the *Act*. That section provides in part:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;

Residential Tenancy Policy Guideline 6 further discusses quiet enjoyment and provides that:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means a substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

Section 63 of the *Act* allows me to set condition on the landlord's right to enter the rental property if there is sufficient evidence that the landlord is likely to enter a site other than as authorized under the *Act*.

I find there is insufficient evidence in support of the tenant's claims. While the tenant provided testimony and witness statements that they felt persecuted and anxious there is little objective evidence that the landlord has breached the *Act*, regulations or tenancy agreement. I find that the tenant's subjective feelings and some aggressive interactions to not amount to a violation on the part of the landlord.

I find that the tenant has provided insufficient evidence in support of their position that there has been a violation by the landlord that would give rise to a monetary claim. The tenant's evidence consists of subjective feelings that the landlord is treating them unfairly, and some hostile interactions witnessed by others. While the tenant claims that the landlord has informed them that they intend to terminate the tenancy, there is no

evidence that the landlords have issued Notices to End Tenancy or taken any action to oust the tenant from the property. The tenant's primary complaints consist of being told by the landlord to maintain their property and some past altercations. While the tenant may have suffered distress there is little evidence that the landlord breached the Act, regulations or agreement.

I find the tenant's testimony that they have filed a police report to be irrelevant to the matter at hand. Anyone is capable of calling the police and making a complaint. I find that this is not evidence that there has been a breach by the landlord.

I find that the tenant has not met their evidentiary burden to show on a balance of probabilities the basis for their claim. I find insufficient evidence that there has been a breach of the Act, regulations or tenancy agreement by the landlord to give rise to a claim. I find that the tenant's subjective feelings and few interactions witnessed by others to be insufficient to show that the landlord is responsible for damages and loss.

I find little evidence that the landlord has entered the rental property for purposes other than those provided in the Act or in a manner other than those outlined in the *Act*.

Consequently, I dismiss the tenant's application in its entirety without leave to reapply.

Conclusion

The tenant's application is dismissed in its entirety 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: December 20, 2018

Residential Tenancy Branch