



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, LRE, MNDCT, OLC, PSF, RR, FFT

Introduction

On August 20, 2018 a hearing was conducted via the conference call for the tenant's application pursuant to the *Manufactured Home Park Tenancy Act* (the "Act"). The tenant attended and provided undisputed evidence. Neither of the two named landlords attended. The tenant withdrew the portion of their application against the named landlord HM. The tenant applied for a monetary order for damage or compensation, recovery of rent paid for repairs, services or facilities agreed upon but not provided and to recovery of the filing fee against the named landlord EM (the "landlord"). The tenant was granted a monetary order.

The landlord applied for a review of this decision based upon fraud that the landlord was incorrectly named. The arbitrator ordered the decision and accompanying order suspended pending a review hearing for the tenant's application.

A review hearing was scheduled for November 8, 2018. The tenant and the landlord appeared at the review hearing. Both parties confirmed in their direct testimony that at no time has either been served with the Review Consideration Decision or the Notice of a Review Hearing. The arbitrator at the review hearing ordered that the review hearing be re-scheduled and a copy of the Review Consideration Decision and the New Notice of a Review Hearing were sent to the landlord. The landlord was directed to read and follow the directions of the Review Consideration Decision.

The Review Consideration Decision orders that the landlord serve the tenant with a copy of the Decision and their current address for service together with the notice of hearing and any evidence they intend to rely upon at the new hearing.

This is a reconvened review hearing granted for the tenant's application pursuant to the *Manufacture Home Park Tenancy Act* (the Act) for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 60;
- an order to allow the tenant(s) to reduce/recover rent for repairs, services or facilities agreed upon but not provided, pursuant to section 58;
- authorization to recover his filing fee for this application from the landlord pursuant to section 65.

The landlord did not attend this hearing which lasted approximately 45 minutes. The tenant appeared and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant testified that they served the original application for dispute resolution and evidence on the landlord personally. I find that the landlord was served with the tenant's application package in accordance with sections 88 and 89 of the Act.

The tenant testified that they have not been served with the Review Consideration Decision and Notice of Review Hearing by the landlord and were only made aware of the reconvened review hearing by contacting the Residential Tenancy Branch directly.

Issue(s) to be Decided

Is the tenant entitled to recover rent paid for services not provided under the tenancy agreement, a monetary award for damage or compensation as a result of the landlord's failure to comply with the tenancy agreement or Act, and to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant provided undisputed evidence regarding the following facts. This periodic tenancy began in June, 2016. At all material times the tenant was dealing with the named landlord EM in regards to the tenancy. The monthly rent was \$500.00 payable on the first of each month. There was no written tenancy agreement. The tenant would make the payments in cash placing the money in a lockbox located on the property. No receipts were ever provided for the rent payments.

The rent was paid in exchange for the tenant to park his 40-foot motorhome/recreational vehicle on the property, and to have access to water, electricity and wireless internet. A garden hose, connected to a water outlet in an outbuilding on the property, was the source of water to the tenant's motorhome. A 200-foot extension cord connected from his motorhome to an outbuilding to provide electricity. The tenant also had use of a storage area in a barn on the property where he housed a large freezer and personal belongings.

The tenant submitted into evidence copies of text message conversations with the landlord regarding payment of rent as evidence that there was a valid tenancy and that the landlord was

responsible for collecting rent payment from the lockbox. The tenant said that the landlord resided on the property during this tenancy. The tenant testified that he was aware that the registered owner for the property is the landlord's mother but all of his dealings were with the landlord.

The tenant testified that he paid \$2,000.00 on July 1, 2018, prepayment of the rent for 4 months until October 31, 2018. The tenant said that when he returned home on July 2, 2018 he found that the water and electricity had been shut off and there was no way to reengage those services. The tenant testified that he attempted to contact the landlord but the landlord did not respond as they had vacated the property. The tenant submitted into evidence photographs of an individual disconnecting the services to the tenant.

The tenant testified that all attempts to contact the landlord were unsuccessful and they vacated the rental property on July 21 2018. The tenant seeks a refund of \$2,000.00 for the rent payment made. The tenant also seeks a monetary award in the amount of \$2,500.00 for the cost of food spoiled due to the lack of electricity, moving costs and other losses they say they suffered as a result of the landlord's actions.

Analysis

Section 1(c) of the the Act provides that the a landlord includes:

1. (c) a person, other than a tenant whose manufactured home occupies the manufactured home site, who
 - (i) is entitled to possession of the manufactured home site, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the manufactured home site;

Based on the evidence submitted I find that the named landlord collected rent, entered into agreements with the tenant regarding provision of services and maintenance of the property and exercised the powers that are given to a landlord under a tenancy agreement. Throughout the text conversations the landlord reminds the tenant of the amount of rent due, states that other individuals are not a party to their agreement and gives permission to the tenant to use facilities on the property. Any agreements or disputes that the landlord may have had with the property owner or their place of residence during the tenancy agreement are immaterial. . I find that there was a valid tenancy agreement between the parties with the named respondent acting as landlord.

Section 60 of the *Act* provides that, in cases where an arbitrator has found that damages or loss results from a party not complying with the *Act*, regulations, or tenancy agreement, an arbitrator may determine the amount of that damage or loss and order compensation to the claimant.

Section 21 of the *Act* sets out the conditions pertaining to a landlord's ability to terminate or restrict a service or facility, as follows:

- 21 (1) A landlord must not terminate or restrict a service or facility if
 - (a) the service or facility is essential to the tenant's use of the manufactured home site as a site for a manufactured home, or
 - (b) providing the service or facility is a material term of the tenancy agreement.
- (2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord
 - (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and
 - (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

In this case, I find that electricity and water services are essential to the tenant's use of the site, and therefore the landlord was not permitted to terminate or restrict these services. I find that the tenant has submitted sufficient evidence to establish that the landlord allowed or failed to prevent the termination of the tenant's electricity and water services.

Therefore, based on the evidence and testimony before me, and on a balance of probabilities, I find that the landlord has failed to comply with the *Act*, and that as a result of that failure, the tenant has incurred a loss equivalent to the reduction in the value of the tenancy agreement resulting from the termination of the service. As this service was an essential service, without which the tenancy could not continue, I find that the tenant is entitled to the full value of the \$500.00 monthly rent for the period of time the tenant was without these essential services, the month of July 2018.

I find that there is insufficient evidence in support of the tenant's claim for a refund of rent payment for the period until October 31, 2018. The text conversations between the parties show that the tenant made monthly payments in the exact amount of \$500.00 in accordance with the tenancy agreement. I find that there is insufficient evidence that the tenant made a lump sum payment of rent for several months in July 2018. I find that the tenant has not met their evidentiary burden of showing on a balance of probabilities that they made payment of several months' worth of rent and suffered a loss as a result.

Similarly, I find that there is insufficient evidence in support of the tenant's claim for damages and loss they claim they suffered. While the cancellation of electricity may have had some

impact on the tenant and their possessions, I find that there is insufficient evidence to show that there was food spoilage, and that the value of the food was what the tenant claims. I find that the tenant's application for monetary losses is not sufficiently supported in the documentary evidence. Consequently, I dismiss this portion of the tenant's application.

As the tenant's application was successful in part I allow the tenant to recover the filing fee for their application.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$600.00 against the landlord.

The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 15, 2019

Residential Tenancy Branch