



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, FFT

### Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution (the Application) pursuant to the *Manufactured Home Park Tenancy Act* for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 60; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 65.

The landlord's agent (the landlord) and the tenant 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.

While I have turned my mind to all the documentary evidence, including the testimony of both parties, not all details of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Application and the tenant's evidentiary package which were sent by registered mail. In accordance with sections 81 and 82 of the *Act*, I find that the landlord is duly served with the Application and the tenant's evidentiary package.

The landlord confirmed that they did not submit any evidence to the Residential Tenancy Branch or to the tenant.

### Issues(s) to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application?

### Background and Evidence

The tenant and the landlord agreed that testified that this tenancy commenced on September 01, 2009, with a current monthly rent of \$450.00, due on the first day of each month.

The tenant provided in documentary evidence:

- Copies of receipts for the payment of the rent to the landlord;
- A copy of a plumbing report and invoice dated July 06, 2018, which indicates that there is a blockage at the inlet where three mobile homes are connected and that there is a dip at a certain point in the line;
- A copy of a cheque from the landlord to the tenant for the same amount as on the plumbing invoice dated July 06, 2018; and
- A copy of a letter from the tenant's insurance company that indicates that there was no lost lot rent paid to the tenant on their claim from January 02, 2018, to July 15, 2018

The tenant submitted that they incurred a loss due to a septic back up in their manufactured home which prevented them from being able to reside on their site for over six months. The tenant referred to the plumbing report from July 2018 which she states demonstrates that the septic issue was the fault of the landlord. The tenant submitted that she should not have to pay the monthly rent for the site from January 2018 to June 2018 and is seeking compensation from the landlord for the time that she was not able to live there.

The tenant confirmed that she did not have the plumbing report available for the septic back up that occurred which resulted in her not being able to live at the site. The tenant maintained that the landlord knew there was an issue as they had their tanks pumped out around that time. The tenant submitted that the issue with the septic was still not resolved when she moved back into the rental unit which resulted in the plumbing company attending the site again.

The landlord confirmed that they paid the tenant for the plumber that was required in July 2018. The landlord stated that they performed work within the week of being informed to correct the dip which required them to dig up the line.

The landlord submitted that they have discussed the tenant's request for compensation with her and requested the plumbing report from the septic back up which occurred in December 2018 and which resulted in the tenant not being able to live in her

manufactured home but that the tenant has not been able to provide it. The landlord stated that there is no evidence that the previous issue which caused the tenant to not be able to live at her site was the landlord's responsibility

The landlord testified that, had they been provided with a report showing that the plumbing issue was their fault, they would have paid it at the time as they did with the most recent plumbing invoice. The landlord stated that they were not informed of the tenant's septic issue and that the tenant was not able to live on their site until after the tenant had moved back into their manufactured home. The landlord stated that they would have taken action to mitigate their losses if they had known that the septic issue in December 2017/January 2018 was their fault as they would not want to be responsible for \$3,000.00 in lost rent for the site while the tenant could not live there.

### Analysis

Pursuant to section 60 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

When two parties to a dispute provide equally plausible 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.

Having reviewed the evidence and testimony, I find that the tenant has established that they paid the monthly rent for the site from January 2018 to June 2018, however; I find that the tenant has not provided sufficient evidence to show that this was a loss due to the actions or neglect of the landlord.

I find that the tenant has not provided any documentary evidence from a plumber or the insurance company from December 2017 or January 2018 which proves that it was the landlord's neglect which caused the septic back up at that time. I find that the plumbing

report, which shows a dip in July 2018, does not prove that the dip existed in December 2017 or January 2018. I further find that this report does not prove that any of the issues contained in the July 2018 plumbing report were the same issues that occurred earlier in the year with the septic back up which forced the tenant from her manufactured home for six months.

As it is the tenant who is claiming compensation from the landlord, it is their responsibility to provide conclusive evidence of the landlord's neglect. I find that the correspondence from the insurance company only states that there was no lost lot rent paid to the tenant as a part of their claim but does not actually give any details of the claim or give a reason why the lost lot rent was not paid to the tenant. I find that the tenant has not provided any documentary evidence of the incident that occurred in December 2017 or January 2018 which provides information as to what occurred and how it was the landlord's neglect that caused the loss of use of the site.

For the above reasons, I find that the tenant has not demonstrated that they suffered a loss due to the actions or neglect of the landlord in violation of the Act, Regulation or tenancy agreement. Therefore, I dismiss the tenant's request for a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement, without leave to reapply.

As the tenant has not been successful in their Application, I dismiss their request to recover the filing fee from the landlord, 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: January 30, 2019

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Residential Tenancy Branch