



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding JLO HOLDINGS (2003) INCORPORATED
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNDC FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on October 2, 2018 (the "Application"). The Tenants applied for the following relief pursuant to the *Manufactured Home Park Tenancy Act* (the "Act"):

- a monetary order for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee.

The Tenants attended the hearing on their own behalves. The Landlords J.T. and L.T. attended the hearing on their own behalves, and on behalf of the corporate Landlord. The Landlords were capably assisted by M.C., an articulated student under the supervision of M.D. Also in attendance for the Landlord was B.S., a witness. All parties giving evidence provided a solemn affirmation.

The Tenants testified the Application package was served on the Landlords by registered mail. M.C. acknowledged receipt on behalf of the Landlords. Further, M.C. advised that the documentary evidence being relied upon by the Landlords was served on the Tenants by email and Xpresspost. The Tenants acknowledged receipt of the Landlords' documentary evidence.

No issues were raised during the hearing with respect to service or receipt of the above documents. The parties were represented at the hearing and were ready to proceed. The parties were provided with a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer to only the relevant facts and issues in this Decision.

Issues to be Determined

1. Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss?
2. Are the Tenants entitled to an order granting recovery of the filing fee.

Background and Evidence

The parties agreed that E.K. purchased the manufactured home in 2004 and entered into a tenancy agreement with the corporate Landlord for the purpose of providing a home for her daughter, L.W. E.K. has never lived in the manufactured home. In addition, the parties agreed that pad rent is currently \$410.00 per month. L.W. testified that she moved out of the manufactured home in June 2017, and that it has been vacant ever since. No issues arose with respect to payment of rent or utilities when due.

The Tenants claim they are entitled to compensation as set out in a Monetary Order Worksheet dated October 9, 2018 (the "Worksheet"), which sets out the following claims:

- Pad rent from July 2017 – December 2017 (\$2,340.00)
- Pad rent from January 2018 – September 2018 (\$3,600.00)
- Utilities for 15 months based on estimate of \$200.00 per month (\$3,000.00)
- Real estate agent commission (\$1,400.00)
- Loss of value of manufactured home (\$10,000.00)

The Tenants indicated the above amounts requested should be increased as appropriate to reflect the passage of time since the Application was made.

First, the Tenants testified the Landlords dissuaded at least three potential purchasers of the manufactured home by making disparaging remarks about it. In support, the Tenants submitted copies of the first page of three contracts of purchase and sale dated November 30 and December 30, 2017, and January 30, 2018.

In support, the Tenants referred to an email from their realtor, B.B., in which he advised that the Landlords' property manager, B.S. "did severely bad mouth the condition of your home." The email is not clear with regard to whom the comments were made.

In addition, the Tenants referred to an email from their realtor, dated June 21, 2018, in which he reported that J.T. stated the rental pad would not be assigned to anyone.

In written submissions, the Tenants suggested that despite previous interest from potential purchasers, the manufactured home currently has "no value" because of "the stigma that has been attached by the park owners".

Second, the Tenants testified the Landlords unreasonably withheld consent to assign the tenancy agreement to a potential purchaser of the manufactured home, B.M., who did not attend the hearing to provide testimony. The parties agreed that only one Request for Consent to Assign a Manufactured Home Site Tenancy Agreement (the "Request") was ever submitted to the Landlords, which was received on February 1, 2018. A copy of the Request was submitted into evidence by the Landlords.

On cross-examination, L.W. agreed the Tenants' agreement with their realtor, which was not submitted into evidence, was commission-based and was contingent on the sale of the manufactured home. L.W. also agreed the manufactured home has not been sold and that the Tenants have not paid the commission to B.B. M.C. submitted that the Tenants have not suffered this loss.

In addition, L.W. acknowledged that the Tenants received an offer from an individual interested in purchasing the manufactured home, but that the Tenants chose not to present the offer to the Landlords because it was unreasonably low.

In response, L.T. testified that she provided no input regarding the sale of the Tenants' manufactured home but acknowledged the Landlords' desire for the Tenants to perform certain improvements involving the roof and stairs. L.T. also testified that after she received the Request she asked the realtor to have B.M. contact B.S. so his suitability as a new tenant could be determined. According to L.T., B.M. never followed up.

J.T. also provided affirmed testimony. On direct examination, he stated he was aware of the Tenants' request to assign the tenancy agreement but denied any interference with the process.

B.S. provided testimony on behalf of the Landlords. Although she acknowledged she generally advises potential purchasers to obtain an inspection, she confirmed she has never attended an inspection and has never made disparaging remarks about a property to an inspector. With respect to the potential purchase by B.M., B.S. testified that she asked him to attend the manufactured home park so the Landlords could complete their due diligence but never heard from him. B.S. assumes B.M. simply “walked away” from the purchase for his own reasons.

At the end of the hearing, M.C. submitted that the Landlords did not breach the *Act*, did not reject the Request (rather, the potential purchaser merely withdrew), that the Tenants have not suffered the losses claimed, that the Tenants have been free to access and use the rental unit, have failed to mitigate their losses, and have not provided evidence of loss in value of the manufactured home.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 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 60 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 Landlords. 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' claim is for losses based on the Landlords' alleged interference with their efforts to sell the manufactured home and refusal to consent to assign the tenancy agreement. Section 28 of the *Act* permits a tenant to assign a tenancy agreement if the tenant has obtained the prior written consent of the landlord or is deemed to have obtained that consent, has obtained an order of the director authorizing the assignment or sublease, or if the tenancy agreement authorizes the assignment or sublease.

Section 44 of the Regulations sets out information to be provided with a request to assign, confirms the request must be in the approved form, and must be served in accordance with section 81 of the *Act*. In addition, sections 45 and 46 of the Regulations confirm that a landlord must respond to a request to assign within 10 days after receipt (unless otherwise agreed) or the landlord is conclusively deemed to have given consent to the assignment and the home owner may assign to the proposed purchaser identified in the written request.

In this case, I find that only one request for consent to assign in the form required under the Regulation was provided to the Landlords. The Request involved one proposed purchaser, B.M. Before the Request was provided to the Landlords, they were under no obligation to consent to an assignment. On receipt of the Request, the Landlords were obligated to provide the Tenants with a response in the form required in the Regulations within 10 days after receipt of the Request. They did not. Accordingly, pursuant to section 46 of the Regulations, the Landlords were conclusively deemed to have given their consent to the assignment referred to in the Request. The Tenants were therefore entitled to proceed with the sale of the manufactured home and assignment of the tenancy based on this deemed consent. It was not the Landlords' obligation to advise the Tenants of their rights.

With respect to the Tenants' suggestion that the Landlords interfered with the sale of the manufactured home, I find there is insufficient evidence before me to conclude that the sale and assignment did not proceed based on the Landlords' actions. The Landlords specifically denied making disparaging remarks about the manufactured home but acknowledged they wanted certain work completed on the again structure. As suggested by B.S., it appears more likely than not that B.M. abandoned the purchase of the manufactured home for his own reasons (or the Tenants' erroneous belief they could not proceed with the sale and assignment), although he did not attend the hearing to provide testimony in this regard.

In light of the above findings, and with respect to the Tenants' specific claims, I find there is insufficient evidence before me to conclude the Tenants are entitled to recover pad rent from July 2017 to present. The parties agreed that the Request was not submitted to the Landlords until February 1, 2018. Until the Request was provided to the Landlords, they were under no obligation to consider the Tenants' request or consent to assign the tenancy. Therefore, there could not have been any loss arising before the Request was served on the Landlords.

After the Request was received, the Landlords were obligated to respond in the approved form within 10 days. As noted above, the Landlords' failure to do so resulted in deemed consent to the assignment. However, rather than proceed with the sale and assignment, the Tenants elected to leave the manufactured home vacant. I find there is insufficient evidence before me to conclude the Landlords were responsible for the failed transaction with B.M.

Further, the Tenants testified the manufactured home has been vacant since July 2017. The Tenants did not provide testimony to indicate they have tried to rent the manufactured home, and confirmed in written submissions that it has not been listed for sale since about June 2018. Therefore, pursuant to section 7 of the *Act*, I also find this aspect of the claim fails because the Tenants have not taken reasonable steps to minimize their damage or loss.

With respect to the Tenant's claim to recover utility payments made for 15 months I find there is insufficient evidence before me to conclude the Tenants are entitled to this relief. This aspect of the Tenants' claim was based on the Tenants' estimate based on several statements submitted into evidence. The Tenants have failed to provide sufficient evidence in support of the actual value of the alleged loss. Therefore, I find that this aspect of the Application is dismissed.

With respect to the Tenant's claim to recover an unpaid real estate agent commission, I find there is insufficient evidence before me to conclude the Tenants are entitled to this relief. The Tenants did not submit a copy of the listing agreement with the realtor, which would establish the value of the claim. Further, the Tenants agreed the realtor's commission was due only on the sale of the manufactured home. The Tenants acknowledged that the manufactured home has not been sold and the commission has not been paid. Therefore, despite the Tenants' assertion the realtor's commission should be paid, it has not. Therefore, the Tenants have not suffered any loss. This aspect of the Application is dismissed.

With respect to the Tenant's claim to recover the estimated loss in value of the manufactured home, I find there is insufficient evidence before me to conclude the Tenants are entitled to this relief. The estimated loss in value was based only on the Tenants' experience in the real estate market. It was not based on an independent appraisal or other documentary evidence confirming any change in value. As noted above, there was insufficient evidence before me to conclude that the Landlords were responsible for any such loss. This aspect of the Application is dismissed.

In light of the above, I find that the Application is dismissed without leave to reapply.

Conclusion

The 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: February 13, 2019

Residential Tenancy Branch