



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, LRE, MNDCT, FFT

Introduction

This hearing was convened as the result of the tenant's application for dispute resolution under the Manufactured Home Park Tenancy Act (the "Act"). The tenant applied for an order requiring the landlord to comply with the Act, the Regulations, or the tenancy agreement, an order suspending or setting conditions on the landlord's right to enter the manufactured home site, a monetary order for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation, and for recovery of the filing fee paid for this application.

The tenant, the landlord, and the landlord's legal counsel attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all relevant evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (the "Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary and Procedural Matters

At the outset of the hearing, the tenant confirmed receiving the landlord's evidence. The tenant's only evidence was received 11 days prior to the hearing. Despite not being received no later than 14 days prior to the hearing, as required by the Rules, I have accepted the tenant's evidence for consideration.

On another preliminary matter, the tenant was advised that the portion of his application seeking monetary compensation of \$613.00 was being refused, pursuant to section 52(5)(c) of the Act because the tenant's application did not provide sufficient particulars of his claim for compensation, as is required by section 52(2)(b) of the Act and Rule 2.5 of the Rules.

Specifically, the tenant failed to provide a breakdown for the \$613.00 amount claimed at the time the tenant applied, or before the 14 day deadline under the Rules to submit evidence expired. I find that proceeding with the tenant's monetary claim at this hearing would be prejudicial to the landlord, as the absence of particulars that set out how the tenant arrived at the amounts being claimed makes it difficult, if not impossible, for the landlord to adequately prepare a response to the tenant's claim.

Both parties have the right to a fair hearing and the respondent is entitled to know the full particulars of the claim made against them at the time the applicant submits their application. Given the above, the tenant is granted liberty to reapply but is reminded to provide full particulars of his monetary claim.

The hearing proceeded on the tenant's remaining issues.

Issue(s) to be Decided

Is the tenant entitled to an order requiring the landlord to comply with the Act, the Regulations, or the tenancy agreement?

Is the tenant entitled to an order suspending or setting conditions on the landlord's right to enter the rental unit?

Is the tenant entitled to recovery of his filing fee paid for this application?

Background and Evidence

The parties have been in prior dispute resolution hearings, as shown by the oral submissions of the parties at the hearing and by the landlord's written evidence.

On April 18, 2019, the parties attended a dispute resolution hearing on the tenant's application for an order cancelling the landlord's One Month Notice to End Tenancy for Cause (the "Notice") and for an order requiring the landlord to comply with the Act, the Regulations, or the tenancy agreement.

In a Decision dated April 18, 2019, another arbitrator with the Residential Tenancy Branch ("RTB") cancelled the landlord's Notice.

In addressing the tenant's request for an order requiring the landlord to comply with the Act, the other arbitrator wrote that the tenant had requested that the landlord and her agents be prohibited from entering his rented lot.

The other arbitrator cautioned the landlord about the provisions of sections 23 and 27 of the Act, concerning entries to the manufactured home site and wrote that the landlord consult and obey these sections.

The other arbitrator also awarded the tenant a filing fee of \$100.00 and ordered that the tenant may recover the filing fee by deducting \$100.00 from his next rental payment.

In the hearing, the tenant submitted that he made a deduction of \$100.00 from the May 2019, rent, as allowed by the April 18, 2019 decision and within a week, someone illegally entered his home, started pounding on the door and threatened him with eviction as the full amount of rent was not paid.

The tenant submitted that he suffered mental anguish as a result.

The tenant submitted that his request for an order requiring the landlord to comply with the Act, the Regulations, or the tenancy agreement and an order suspending or setting conditions on the landlord's right to enter the manufactured home site stem from the same issue, that being the landlord's illegal entry to his home.

Landlord's response-

The landlord, through her legal counsel, submitted that the landlord was unaware of the April 18, 2019, decision of another arbitrator, allowing the tenant to deduct \$100.00 from his rent, as it was sent by email and she does not check that email account regularly.

The landlord submitted that when the tenant deducted this from, he failed to inform her of the other arbitrator's decision, ordering the deduction.

The landlord submitted that her agent knocked on the tenant's door to collect the rent deficiency, but did not go inside the tenant's home. The landlord explained that the front door of the tenant's home was open, as there is an exterior door, leading to the

actual door. The landlord submitted that her agent only knocked on the tenant's interior door and did not illegally enter the tenant's home.

The landlord also submitted that the tenant was not home during that time, as they saw him walking down the road.

Analysis

Upon a review of the relevant evidence and on the balance of probabilities, I find the following:

While the tenant submitted that the landlord's agent entered his home illegally, the landlord has disputed that this happened. The landlord submitted that she saw the tenant walking home at this time, and therefore he was not home.

I find disputed verbal testimony, without anything further, does not allow the applicant to sufficiently meet their burden of proof on a balance of probabilities. I therefore find that the tenant's testimony, which was disputed by the landlord, fails to demonstrate that the landlord violated the Act by entering the manufactured home site illegally.

I therefore decline to grant the tenant an order suspending or setting conditions on the landlord's right to enter the manufactured home site.

As to the tenant's request for an order requiring the landlord to comply with the Act, the tenant confirmed that this request is surrounding the same issue dealt with by another arbitrator in the decision of April 18, 2019.

I cannot re-decide that issue as I am bound by this earlier Decision, under the legal principle of *res judicata*.

The landlord remains under an obligation to comply with the Act.

I therefore dismiss the tenant's request for for an order requiring the landlord to comply with the Act, the Regulations, or the tenancy agreement.

As I have found that the tenant failed to prove the landlord or agent illegally entered the manufactured home site and as the remaining issue has been decided upon previously, I dismiss his request to recover the filing fee.

Conclusion

The portion of the tenant's application seeking monetary compensation was refused for the above reasons. The tenant is at liberty to re-apply for that monetary claim.

The remaining portions of the tenant's application are dismissed.

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: July 30, 2019

Residential Tenancy Branch