



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFT, MNDCT, OLC, RP

Introduction

This hearing dealt with the tenant's application pursuant to the *Manufactured Home Park Tenancy Act* (the *MHPTA*) for:

- an order to the landlord to make repairs to the rental unit or site pursuant to section 27;
- an order requiring the landlord to comply with the *MHPTA*, regulation or tenancy agreement pursuant to section 55;
- a monetary order for compensation for damage or loss under the *MHPTA*, regulation or tenancy agreement pursuant to section 60; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 65.

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 parties acknowledged receipt of evidence submitted by the other. 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.

Preliminary Issue

At the outset of the hearing JP advised that the tenant is only seeking to pursue a monetary order and the recovery of the filing fee, accordingly; I dismiss the the tenants application save and except for a monetary order and the recovery of the filing fee.

Issue(s) to be Decided

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

Is the tenant entitled to the recovery of the filing fee from the landlord for this application?

Background and Evidence

JP made the following submissions on behalf of the tenant. JP submits that the tenancy began on September 1, 2016 and is ongoing. JP submits that the tenant made a verbal request in October 2016 to the landlord that he be allowed to build a fence in the front of his home for his own privacy and the safety of his dog. JP submits that he received verbal authorization from the landlord. JP submits that in May 2017 the tenant built the fence and that the landlord was fully aware of it and did not ask him to stop.

JP submits that the landlord issued three letters; December 2018, May 2019 and June 2019 to have the tenant remove the fence or they would. JP submits that on July 12, 2019 the landlord removed the wall without the tenants' permission. JP submits that the tenant is seeking the recovery for the cost of materials and his labour to build the fence; approximately \$800.00 along with the \$100.00 filing fee.

ES gave the following testimony. ES testified that he did not give the tenant permission to build the fence. ES testified that the fence encroaches on a common road causing safety issue as well as making it impossible for snow plows to access that area of the park. ES testified that there is a large drop off of over four feet on one side of the road and it is imperative to access the common roads safely during the winter months when there is significant snowfall and ice. ES testified that the fence also is an obstacle for the future re-gravelling of the road that is planned.

ES testified that he gave numerous verbal warnings to the tenant prior to the three written warnings to remove the fence, to which the tenant ignored. ES testified that the fence materials have been set aside for the tenant and he is free to pick them up at any time. ES testified that no one in the park has a fence built on the front of their properties and that no one is allowed to build structures on the common access road. ES testified that the fence is not on the tenants' property, but a common access road. ES testified that the tenants' application should be dismissed.

Analysis

Section 60 of the *MHPTA* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the *MHPTA*, the party claiming the damage or loss bears the burden of proof.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *MHPTA* on the part of the other party, the applicant must also show that they followed section 7(2) of the *MHPTA* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In addition to the above I have also considered the following:

Prohibitions on changes to locks and other access

25(2) A tenant must not change locks or other means that give access to common areas of a manufactured home park unless the **landlord agrees in writing to the change.**

ES gave clear, concise and compelling testimony. I find that the tenant did not have the landlords written permission as noted above and required; both parties confirmed that fact. For absolute clarity, I find that the tenant was in breach of the MHPTA by building this fence without written permission. In addition, the tenant provided an “approximate cost” to build the fence but failed to provide a specific and detailed breakdown to justify and quantify the amount as sought. Based on the above, I find that the tenant has not satisfied me of any of the four factors as outlined in section 60, accordingly; I dismiss the tenants application in its entirety without leave to reapply.

As the tenant has not been successful in their application, they are not entitled to the recovery of the filing fee, they must bear that cost.

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 *Residential Tenancy Act*.

Dated: October 03, 2019

Residential Tenancy Branch