



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, RR, FFT

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the Manufactured Home Park Tenancy Act (Act). The tenant applied for an order requiring the landlords to comply with the Act, for an order for a reduction in the monthly rent, and for recovery of the filing fee paid for this application.

The tenant, the landlords, and their witnesses attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, I excused the witnesses until their testimony was needed.

Further, in response to my inquiry, the parties ultimately confirmed that they had in their possession all the documentary and photographic evidence before me. I therefore accepted all evidence for the hearing.

Thereafter all 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 Residential Tenancy Branch (RTB) Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary and procedural matters-

The tenant's application shows that although she requested a reduction in her monthly rent, that part of her application shows that she is actually seeking monetary compensation from the landlords, for anticipated landscaping costs.

Issue(s) to be Decided

Is the tenant entitled to an order requiring the landlord to comply with the Act, to a monetary award against the landlords, and to recovery of her filing fee?

Background and Evidence

The tenant said this tenancy began in August 2017 and current monthly pad rent is \$418.00.

The evidence shows that the tenant filed a previous application for dispute resolution against the landlords for an order requiring the landlords to make necessary, regular repairs to the manufactured home site.

At the hearing on October 22, 2018, on the tenant's application, the tenant attended; however, the landlords failed to attend. A Decision was issued by another arbitrator on October 22, 2018, granting the tenant's application.

The other arbitrator in the Decision of October 22, 2018, ordered the landlords "to excavate and remove the fill that was deposited into the sink hole, remove sand that was spread over the grass and repair the tire rut marks in the yard. The landlord must have this work completed by spring of 2019".

The landlords filed a review consideration application following that hearing based upon their claim that they were unable to attend the hearing due to circumstances beyond their control; however, that application was dismissed and the original Decision of October 22, 2018, was confirmed.

In the present application, the tenant stated that the landlords have failed to comply with the Decision of October 22, 2018, and that she has not had quiet enjoyment of her yard as a result. The tenant requests the landlords to comply with that Decision.

As to her monetary claim, the tenant requested the amount of \$2,940.00, which is a quote from a landscaper in 2018.

The tenant confirmed that she has not incurred any expenses yet for repair of her manufactured home site.

Landlords' response-

The landlord, AK, confirmed not complying with the previous order in the Decision of October 22, 2018.

The landlord provided her reasons for not complying, which were also contained in her documentary evidence. This evidence, which I reviewed prior to the hearing, indicates that the landlord would argue her reasons why she should not be required to comply with the previous Decision, with implications that it was obtained by fraud.

The landlord further requested that the Decision of October 22, 2018, be overturned.

Analysis

Based on the relevant evidence before me, and on a balance of probabilities, I find as follows:

I will address the landlords' submissions first.

The landlord said that she could not comply with the previous Decision of October 22, 2018, and I find her evidence was directed to her reasons.

I advise the landlord this hearing is not an opportunity to re-argue the merits of the tenant's previous application, which resulted in a Decision on October 22, 2018.

I informed the landlord that I cannot re-hear and change or vary a matter already heard and decided upon as I am bound by the earlier Decision of October 22, 2018, under the legal principle of *res judicata*. Res judicata is a rule in law that a final decision, determined by an Officer with proper jurisdiction and made on the merits of the claim, is conclusive as to the rights of the parties and constitutes an absolute bar to a subsequent Application involving the same claim.

As to the tenant's request for the landlord to comply with the Act, I find this request was more in the way of the tenant seeking enforcement of the previous Decision of October 22, 2019, as the manufactured home site work has not been started or completed by the landlord, as ordered.

As the landlords have already been ordered to excavate and remove the fill that was deposited into the sink hole, remove sand that was spread over the grass and repair the tire rut marks in the yard, in the Decision of October 22, 2018, I find any order I make would be redundant as the landlords remain required to follow the directions and orders of the October 22, 2018, Decision.

I therefore dismiss this part of the tenant's application.

As to the tenant's request for monetary compensation, the Act requires an applicant to show proof of loss in order to restore the party to the same position as before sustaining the loss.

In this case, the tenant confirmed that her proof was only a dated quote from 2018.

I therefore dismiss the tenant's request for \$2,940.00, due to insufficient evidence that she has sustained a loss as of the date of her application.

As I have dismissed the tenant's application for the reasons cited above, I decline to award the tenant recovery of her filing fee.

Cautions to the landlords-

As the landlord confirmed that they have not complied with the orders made in the Decision of October 22, 2018, I find it necessary to caution the landlords that if they continue to fail to comply with the decisions or orders issued through the Residential Tenancy Branch's Dispute Resolution Services, they could be subject to an administrative penalty up to \$5,000.00 for each day the contravention continues.

If the landlords would like to review their legal obligations, the landlords may want to review sections 87.3 and 87.4 of the Act. In all cases, the landlords may consult with staff at the Residential Tenancy Branch if they have questions about their legal obligation.

I further caution the landlords that, in addition to a possible levy of administrative penalties, if they continue to fail to comply with a Decision of the director, the tenant may seek compensation for other related issues, such as for loss of quiet enjoyment and an order for a reduction in monthly rent for devaluation of the tenancy.

Conclusion

For the reasons above, I dismiss the tenant's application.

I have issued cautions to the landlords.

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: November 21, 2019

Residential Tenancy Branch