



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

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

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 60; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 65.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 1:41 p.m. in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 p.m. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

Issues to be Decided

1. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 60 of the *Act*?
2. Is the tenant entitled recover the filing fee for this application from the landlord, pursuant to section 65 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the tenant, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

The tenant provided the following undisputed testimony. When the tenant and the landlord met, the landlord was trying to set up a tiny home community. The landlord and the tenant signed a tenancy agreement for a parcel of land on November 1, 2018. The tenancy agreement was entered into evidence and does not state on what date the tenancy was to commence. The tenant testified that she moved her tiny home onto the property in January of 2019. The tenant moved off the subject rental site on September 19, 2019.

The tenancy agreement states that rent in the amount of \$4,500.00 for the year is payable in full at the beginning of each year. The tenant testified that she paid the landlord \$4,500.00 in advance of moving in and paid the landlord an additional \$250.00 for the cost of installing a new hydro meter. The tenant entered into evidence Interac e-transfer records showing same.

The tenant testified that at some point after she moved in she paid the landlord \$1,000.00 to use a storage shed on the property. The storage shed was not part of the tenancy agreement.

The tenant testified that the landlord promised to have water and electricity hook ups at the subject rental site when she moved in but that the landlord failed to have the hook ups ready for January 2019. The tenant testified that she powered her tiny home with a generator and continuously asked the landlord when the water and electricity would be hooked up and the landlord always promised that the hook-ups would be ready soon. The tenant entered into evidence emails between the landlord and the tenant confirming the tenant's above testimony.

The tenant testified that by the summer of 2019 it became apparent that the landlord was not going to have the water and electricity hooked up in the near future, so she gave the landlord notice to end the tenancy and moved out September 19, 2019.

The tenant testified that the landlord agreed to refund her the \$4,750.00 she paid the landlord for rent and the hydro meter because the subject rental site was not what was promised. The tenant testified that in return she agreed to allow the landlord to retain

the \$1,000.00 paid towards the storage shed. In support of this testimony, the tenant entered into evidence an email chain between the landlord and the tenant dated June 5, 2019 which states in part:

Tenant: Are you able to transfer those funds back by chance?

Landlord: I am tapped right now...Mortgage just came out and property taxes and house insurance all at once....I need to spread them out more... Electrician to pay and Hydro....But have a few things int eh works for funds so be a week maybe....Applied for a loan...against the place....

The tenant also entered into evidence an email chain between the tenant and the landlord dated June 8, 2019 which states in part:

Tenant: I would be comfortable with walking away from the shed and the \$1000.00 spent on it to reimburse you for the time on the land without the things that were promised. I would likely be looking at moving my home in September or the very first of October. Would this give you enough time to get me the rest of my money back to me?

Landlord: That's fine... That works...

The tenant is seeking an Order for the landlord to return all of her rent money in the amount of \$4,500.00 and the \$250.00 paid towards the hydro meter.

Analysis

Section 2 of the *Act* states:

2 (1)Despite any other enactment but subject to section 4 [*what this Act does not apply to*], this Act applies to tenancy agreements, manufactured home sites and manufactured home parks.

(2)Except as otherwise provided in this Act, this Act applies to a tenancy agreement entered into before or after the date this Act comes into force.

The *Act* gives me authority to enforce and deal with issues arising out of the tenancy agreement between the landlord and the tenant. The *Act* does not give me authority to enforce agreements made between the parties outside the tenancy agreement. I find that the storage shed agreement and the agreement for the landlord to repay the tenant

rent money were agreements separate and apart from the tenancy agreement, and I therefore do not have jurisdiction to render decisions on them. I do however, have authority to compensate the tenant for the reduction in the value of her tenancy caused by the landlord's failure to provide water and electricity hook ups.

Section 21(1) of the *Act* states that a landlord must not terminate or restrict a service or facility if:

- (a) the service or facility is essential to the tenant's use of the manufactured home site as a site for a manufactured home, or
- (b) providing the service or facility is a material term of the tenancy agreement.

I find that hook ups for water and electricity are essential to the tenant's use of the manufactured home site as a site for a manufactured home. I find that the landlord providing hooks ups for water and electricity were material terms of the tenancy agreement. I find that the landlord breached section 21(1) of the *Act* by failing to provide water and hydro hook ups.

Section 58(1)(f) of the *Act* states that without limiting the general authority in section 55 (3) [*director's authority respecting dispute resolution proceedings*], if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement.

I find that the value of the tenancy agreement was severely curtailed by the lack of electricity and water. I find that this tenancy agreement began in January of 2019 as that is when the tenant moved onto the subject rental site. I find that the value of the tenancy was reduced by 50% from January 2019 to September 2019. The rental rate per month is \$375.00, 50% of the rent from January 2019 to September 2019 is \$1,687.50. I Order the landlord to repay the tenant \$1,687.50 for rent paid for the months of January to September 2019.

Section 38(3) of the *Act* states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

I find that the tenant provided the landlord with written notice of the landlord's breach of the material term via email on numerous occasions between January 2019 and June 2019. While email does not accord with the service requirements of section 81 of the

Act, I find that the landlord was sufficiently served, for the purposes of this *Act*, pursuant to section 64 of the *Act*, as the landlord responded to the tenant's emails, indicating that she received them.

Pursuant to section 38 of the *Act*, I find that the tenant was entitled to end the tenancy early, due to the landlord's breach of a material term. I therefore find that the tenant is entitled to recover all rent paid for the months of October to December 2019 totalling \$1,125.00.

I find that the tenant is entitled to recover the \$250.00 paid to the landlord for the installation of the hydro meter as no meter was installed.

As the tenant was successful in her application for dispute resolution, she is entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 65 of the *Act*.

Conclusion

I issue a Monetary Order to the tenant under the following terms:

Item	Amount
Reduction in rent January to September 2019	\$1,687.50
Refund of October to December 2019 rent	\$1,125.00
Hydro meter	\$250.00
Filing Fee	\$100.00
TOTAL	\$3,162.50

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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*.