



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ZAM ENTERPRISES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT FFT

Introduction

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

- a monetary order for money owed under the *Act*, regulation or tenancy agreement pursuant to section 60; and
- authorization to recover the filing fee for this application, pursuant to section 65.

EH appeared for the tenants, while AK represented the landlord in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package ("Application"). In accordance with section 82 of the *Act*, I find that the landlord was duly served with the application for dispute resolution. Both parties confirmed receipt of each other's evidentiary materials and that they were ready to proceed.

Issues

Is the tenant entitled to the monetary order applied for?

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

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony provided in the hearing, not all details of the respective submissions and /

or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

This month-to-month tenancy began on August 1, 2016. The tenant EH pays \$329.00 in monthly pad rental to the landlord.

During the hearing, the tenant was asked to clarify her monetary claim as she had amended her original monetary claim. The tenant is seeking the following monetary orders:

Item	Amount
Mortgage payments	\$5,000.00
Pad Rental repayment	1,316.00
Furnace Damage	157.00
Toilet Damage	112.00
Filing Fee	100.00
Total Monetary Order Requested	\$6,685.00

The tenant testified that she had moved out on October 2019 to reside in another home, and a couple had moved in to caretake the home. The tenant testified that the landlord's agent evicted her caretakers, and as a result she has been unable to pay her mortgage. The tenant testified that she had to borrow money for pad rental, and is seeking a monetary order for her mortgage payments, and pad rental repayment.

After the first caretakers were evicted, the tenant found new caretakers for the manufactured home, and they were also evicted by the landlord. The tenant testified that the landlord would intimidate anyone who would try to occupy the manufactured home until they moved out. The tenant testified that the home was now vacant due to the landlord's illegal evictions. The tenant called several witnesses in support of her claim, including her realtor, the caretakers, and JR, who had lent the tenant money to assist with her pad rental payments.

The tenant testified that additionally the landlord had cut off the heat, causing damage to the home. The tenant is seeking compensation for damage to the furnace and toilet as a result. TC testified in the hearing that the tank was cracked after being frozen, and that the furnace was also damaged.

The landlord testified in the hearing that the caretakers had left because they were looking at moving to another home in the manufactured home park. The landlord

testified that no sublets were allowed in the manufactured home park, and that she had inquired with the occupants whether they were in fact a niece of the tenant. After finding out that sublets were not allowed, the occupants moved out. The landlord does not dispute that she had served the occupants with a notice to end tenancy, but that the occupants chose to move out. The landlord testified that she had the right to enforce park rules, which include no sublets.

Analysis

Section 60 of the *Act* 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 *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove, on a balance of probabilities, that the landlord had caused damage and losses in the amounts claimed by the landlord.

Section 1 of the *Act* defines a subtenant agreement as follows:

"sublease agreement" means a tenancy agreement

- (a) under which
 - (i) the tenant of a manufactured home site transfers the tenant's rights under the tenancy agreement to a subtenant for a period shorter than the term of the tenant's tenancy agreement, and
 - (ii) the subtenant agrees to vacate the manufactured home site at the end of the term of the sublease agreement, and
- (b) that specifies the date on which the tenancy under the sublease agreement ends;

Section 5 of the *Act* prohibits a party from attempting to contract out of or avoid the *Act* or regulations.

This Act cannot be avoided

5 (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

In this case, I find that the occupants, whom the tenant referred to as caretakers in this application, fall under the definition of subtenants under the *Act*. I find that the designation of the occupants as caretakers do not relieve the tenant of her obligations under the *Act* or regulations as set out below.

RTB Policy Guideline #19 as well as section 28 (1) of the *Act* provides clarification on the obligations of a tenant under *Manufactured Home Park Tenancy Act* before subletting the home. The *Act* and *Guideline* clearly state that the tenant must obtain the prior written consent of a landlord before subletting the home.

Assignment and subletting

28 (1) A tenant may assign a tenancy agreement or sublet a manufactured home site only if one of the following applies:

- (a) the tenant has obtained the prior written consent of the landlord to the assignment or sublease, or is deemed to have obtained that consent, in accordance with the regulations;
- (b) the tenant has obtained an order of the director authorizing the assignment or sublease;
- (c) the tenancy agreement authorizes the assignment or sublease.

D. LANDLORD'S CONSENT

A tenant may assign or sublet their interest in a tenancy agreement only with the prior written consent of the landlord. If a tenant assigns or sublets without obtaining the landlord's prior written consent (or, in the case of a manufactured home, a director's order), the landlord has cause to serve a One Month Notice to End Tenancy (form RTB-33) under the *Legislation*⁵. Whether or not such a notice is successful, if challenged, will depend on an arbitrator's finding as to whether a sublet as contemplated by the *Legislation* has occurred.

Furthermore, the tenant must make this request using the approved form, specifically RTB-25. The tenant has the right to apply for compensation for loss, which is also set out in RTB Policy Guideline #19 as stated below:

F. COMPENSATION FOR LOSS

The director has authority to make an order for the payment of compensation if it is determined that a landlord acted unreasonably in refusing to consent to a request to assign a tenancy agreement or to sublet a rental unit. Failure to accept a reasonable assignment or sublet may affect a landlord's claim for rental loss because it may be determined that the landlord did not mitigate his or her losses. See Policy Guideline 16 – Compensation for Damage or Loss.

In this case, I find that the tenant failed to provide sufficient evidence that she had obtained the prior, written permission of the landlord to sublet her home. Furthermore, although the tenant suffered losses due to the loss of the occupants, and although the occupants may have been served Notices to End Tenancy, they made the decision to move out instead of disputing the Notices.

I find that the tenant had contravened the *Act* by allowing parties to sublease the home without the landlord's written consent. Furthermore, I find that the occupants made the decision to move out, without filing any applications to dispute the notices. I am not satisfied that the tenant had met the burden of proof to support that the landlord had failed to comply with the *Act*, and that the losses claimed in this application are the direct result of those contraventions.

The tenant also filed a monetary claim for the damage caused to the furnace and toilet. As stated above, the burden of proof is on the tenant to support that the tenant suffered the losses claimed due to the other party's failure to comply with the *Act* or tenancy agreement. Although I accept that the parties moved out, without the tenant's knowledge, I am not satisfied that the damage was directly caused by the landlord's contravention of the *Act* or tenancy agreement.

For the reasons above, I dismiss the tenant's entire application without leave to reapply.

Conclusion

The tenant's entire 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: April 17, 2020

Residential Tenancy Branch