



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Ridgeview Venture
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL, MNDCL-S

Introduction

This hearing was reconvened from an adjourned hearing originally scheduled for March 3, 2020. I had allowed the tenant's adjournment application as the tenant was in the hospital and was unable to attend.

This hearing dealt with the landlord's application pursuant to the *Manufactured Home Park Tenancy Act* for an Order of Possession for:

- a monetary order for damage to the unit, site, or property, unpaid rent or utilities, or for money owed or compensation for damage or loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

RS and GVE 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 make submissions, to call witnesses and to cross-examine one another.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package ("Application"). In accordance with section 82 of the *Act*, I find that the tenant 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.

At the outset of the hearing the landlord confirmed that they are not seeking a monetary order as indicated in their application. The landlord is requesting an order that the tenant comply with Park Rules and remove a structure constructed by the tenant. The hearing proceeded to deal with this application in regards to the removal of this structure.

Issue(s) to be Decided

Is the landlord entitled to an Order requested?

Is the landlord entitled to recover the filing fee?

Background and Evidence

This month-to-month tenancy began on January 15, 2019. Monthly pad rental is set at \$347.52, payable on the first of every month.

The landlord filed this application to request that an order be made for the tenant to remove a structure, a patio cover, from their manufactured park home. The landlord is asking for the removal as the tenant failed to obtain written permission to install this structure as required by the Park Rules.

The landlord provided a copy of the Park Rules in their evidentiary materials, which the tenant disputes receiving until after she had installed the structure. The landlord testified that a copy was provided at the beginning of the tenancy.

The tenant does not dispute that she had installed the patio cover, which was constructed between November 18 and 22, 2019. The tenant testified that she received a copy of the park rules on November 23, 2019. The tenant does not dispute that she did not have written permission of the landlord, but that other tenants have installed the same structure. The tenant feels that the landlord is making this application for the removal as retaliation for her refusal to pay an illegal rent increase.

The tenant testified that she had the verbal permission of the park manager, who disputes ever giving the tenant permission to install the structure. The tenant testified that the only requirement was for her to obtain the services of an authorized contractor, which she did. The tenant testified that she had installed the structure at a significant cost, and it would be a financial burden for her to remove it.

Analysis

I have considered the testimony of both parties, and in light of the conflicting testimony, I find that the landlord failed to provide sufficient evidence that the tenant was provided a copy of the Park Rules before she had installed the patio cover. I am not satisfied that evidence supports that the tenant was made aware of the Park Rules before the installation of the patio cover, and therefore I do not find that the tenant contravened the Park Rules by installing the patio cover.

I do note the tenant's obligation to repair and maintain the manufactured home park and common areas as set out in section 26(3) of the MHPTA as follows:

(3) A tenant must repair damage to the manufactured home site or common areas that is caused by the actions or neglect of the tenant or a person permitted in the manufactured home park by the tenant.

I find that the landlord failed to provide sufficient evidence that the tenant has caused damage to the manufactured home site or common areas. I am not satisfied that the tenant has failed to comply with her obligations under the *MHPTA*. On this basis, I dismiss the landlord's application without leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. For this reason, the landlord's application for recovery of the filing fee is dismissed without leave to reapply.

Conclusion

I dismiss the landlord's application for an Order for the tenant to remove the structure without leave to reapply.

The landlord's application to recover the filing fee 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: May 7, 2020

Residential Tenancy Branch