



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NO 151 CATHEDRAL VENTURES
LTD SUMMERLAND BEACH RV PARK & CAMPGROUND
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, PSF, LRE, MNDCT, FFT

Introduction

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

- an order requiring the landlords to comply with the *Act*, *Manufactured Home Park Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 55;
- an order requiring the landlords to provide services or facilities required by law, pursuant to section 58;
- an order restricting the landlords' right to enter the rental site, pursuant to section 63;
- a monetary order for compensation for damage or loss 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.

The landlords' two agents, landlord WP ("landlord") and "landlord RD," and the tenant's agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 82 minutes. The tenants' agent presented the tenants' application for approximately 43 minutes, while the landlords' two agents presented their response for approximately 14 total minutes. The remaining 25 minutes of the hearing was spent discussing procedural issues and confirming tenancy details with both parties.

The landlord confirmed that he was the president of the landlord company named in this application and landlord RD confirmed that she was the manager of the manufactured home park landlord named in this application. Both of the landlords' agents confirmed that they had permission to speak on behalf of both landlord companies named in this application (collectively "landlords"). The tenants' agent confirmed that he had permission to represent both "tenants" named in this application at this hearing.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package and the tenants' agent confirmed receipt of the landlords' evidence. In accordance with sections 81, 82 and 83 of the *Act*, I find that the landlords were duly served with the tenants' application and the tenants were duly served with the landlords' evidence.

Pursuant to section 57(3)(c) of the *Act*, I amend the tenants' application to correct the landlord company name. Neither party objected to this amendment during the hearing.

During the hearing, the tenants' agent did not present or review any evidence regarding the tenants' claim to restrict the landlords' right to enter the rental site. Therefore, this application is dismissed without leave to reapply.

Issues to be Decided

Are the tenants entitled to an order requiring the landlords to comply with the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to an order requiring the landlords to provide services or facilities required by law?

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claim and my findings are set out below.

Both parties agreed to the following facts. Monthly rent in the amount of \$217.61 is payable on the first day of each month. No security deposit was paid by the tenants. The tenants reside in the manufactured home ("rental home"), which they own, and rent the manufactured home site ("site") from the landlords.

The landlord said that the tenancy began on January 1, 2009, as per the written tenancy agreement, while the tenants' agent said that it began in 1994.

The tenants' agent stated the following facts. He said that the tenants wanted an order of possession for the rental home and exclusive possession of the site, but they are aware that they did not apply for it, so they were not pursuing it at this hearing. He claimed that the tenants received a Notice Terminating or Restricting a Service or Facility ("NTRSF") for them to remove their rental home from the site for six months of the year. He explained that it was unreasonable and unconscionable to ask the tenants to leave their home after 25 years of residing there.

The tenants seek a monetary order of \$5,044.58 plus the \$100.00 application filing fee. The tenants seek \$3,412.50 in legal fees for preparing for this application and \$1,632.08 in rent reimbursement. Of the rent reimbursement, the tenants seek \$870.00 for 4 months of rent at \$217.61 in the year 2019 for receiving the "landlord's notice of illegal eviction" and \$55.00 per day in fees. The tenants seek \$217.61 for one month of rent in January 2020, where "the tenants were still under notice of illegal eviction and \$55/day fees, until the RTB decision in favour of the tenants on February 3, 2020." The tenants seek \$544.03 for 2.5 months of rent "for the months in which the tenants have been under notice of termination of the right to exclusive possession (March 5 to the date of this hearing on May 21, 2020)."

The tenants' agent stated that the tenants are entitled to nominal and aggravated damages because the landlords' violated their loss of quiet enjoyment and harassed them by issuing notices to end tenancy and now the NTRSF to force the tenants to move their rental home. He maintained that at a recent, previous Residential Tenancy Branch ("RTB") hearing between these parties regarding this tenancy, the Arbitrator found in favour of the tenants, not the landlords. The tenants provided a copy of this decision. The file numbers for that hearing appear on the front page of this decision. That previous hearing was a 12-party joiner application on January 28, 2020, after which a decision was issued by a different Arbitrator on February 3, 2020. The tenants' agent also referenced other previous RTB decisions, as precedents, which are unrelated to this tenancy.

The landlords dispute the tenants' entire application. The landlord stated the following facts. The tenants' agent only spoke about past irrelevant events during the hearing, which have already been decided at the previous RTB hearing. The tenants signed the tenancy agreement in the role of both landlord and tenant. The tenants are only entitled to seasonal occupation of the rental site for six months, as they signed on to a seasonal

tenancy agreement for a lower rent. There are no storage rights for the tenants in the tenancy agreement, it is a summer vacation spot for the tenants and not a primary residence, and there is no dispute that they are tenants. The landlords are entitled to terminate non-essential services, they are not harassing the tenants, and they are following the rules.

Analysis

I note that the tenants' agent spoke for much longer, at 43 minutes, as compared to the landlords' two agents, at 14 minutes, during this hearing. Despite this, I found that the tenants' agent focussed on past events, a past RTB hearing, and past issues related to the use of the rental home and site and notices to end tenancy. These issues have already been adjudicated at the previous RTB hearing and are not relevant to the tenants' current application. Conversely, I found that the landlord focussed on present issues and the tenants' current application for orders and monetary compensation. The landlord noted during the hearing that the tenants' agent was focussing on past issues that had already been adjudicated at previous RTB hearings.

Orders

Section 21(1) of the *Act* states the following (my emphasis added):

Terminating or restricting services or facilities

21(1) 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 dismiss the tenants' application for an order to comply with the *Act, Regulation* or tenancy agreement and to provide services or facilities required by law, without leave to reapply. I find that the tenants failed to provide sufficient documentary or testimonial evidence to support these claims. I find that the tenants did not adequately provide specific details or particulars of their claims.

I find that the tenants simply claimed that it was unreasonable or unconscionable for them to move their rental home. I find that the tenants failed to show why they wanted the NTRSF set aside.

I find that the tenants did not indicate how any services or facilities were “material” or “essential” to their tenancy as noted on page 2 of the standard RTB NTRSF form provided by the tenants and as required by section 21 of the *Act*, as noted above.

Monetary Claim

Pursuant to section 60 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claim. To prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the landlords in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I dismiss the tenants’ monetary application of \$5,044.58, without leave to reapply.

As noted to both parties during the hearing, the tenants are not entitled to legal fees of \$3,412.50 related to this application or hearing. The only hearing-related costs recoverable under section 72 of the *Act*, are for filing fees. This claim is dismissed without leave to reapply.

Section 22 of the *Act* deals with the tenants’ right to quiet enjoyment:

Protection of tenant's right to quiet enjoyment

22 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the manufactured home site subject only to the landlord's right to enter the manufactured home site in accordance with section 23 [landlord's right to enter manufactured home site restricted];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline 16 states the following with respect to types of damages that may be awarded to parties:

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

- *“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.*
- *“Aggravated damages” are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.*

I dismiss the tenants' application for rent reimbursement of \$1,632.08, without leave to reapply. I find that the tenants have provided insufficient evidence to show that the landlords caused a loss of quiet enjoyment as per section 22 of the Act, as noted above. I also find that the tenants have provided insufficient evidence to show that they are entitled to compensation for nominal or aggravated damages, due to the landlords' behaviour, as per Residential Tenancy Policy Guideline 16, as noted above.

I find that the landlords have legal rights to issue notices to end tenancy, NTRSF forms, and other tenancy-related and RTB notices. This is regardless of who is successful at any RTB hearing, as both parties are entitled to be heard at an RTB hearing and to a legal, binding decision from an Arbitrator if there is a dispute over tenancy rights. I do not find this to be harassment, as claimed by the tenants, even if they were successful at their most recent hearing in February 2020.

As the tenants were unsuccessful in this application, I find that they are not entitled to recover the \$100.00 filing fee from the landlords.

Conclusion

The tenants' 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: May 21, 2020

Residential Tenancy Branch