Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held on June 16, 2020. The Tenant applied for the following relief, pursuant to the *Manufactured Home Park Tenancy Act* (the "*Act*"):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 60.

The Tenant attended the hearing. The Landlord did not attend the hearing. The Tenant testified that she sent a copy of the Notice of Hearing along with supporting documentary evidence to the Landlord by registered mail on January 24, 2020. Proof of mailing was provided into evidence. The Tenant stated she sent it to the Landlord at his place of residence, where she met him to pay him the first month's rent. Pursuant to sections 82 and 83 of the *Act*, documents served in this manner are deemed to be received 5 days later. I find the Landlord is deemed to have received this package on January 29, 2020.

During the hearing, the Tenant amended her application to reduce her initial claim from $670.00 to $400.00, as this is what she paid for January rent. I hereby amend the Tenant's application accordingly, pursuant to section 57(3)(c), as it is not prejudicial to the respondent to reduce the applicant's claim.

The Tenant was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However,

only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Tenant entitled to compensation for money owed or damage or loss under the Act?

Background and Evidence

The Tenant stated that she responded to an ad the Landlord had posted online in mid December 2019, which specified that she was to rent a “pad” to park her trailer, plus water hookup, and electricity, all for $400.00 per month, starting January 1, 2020. The Tenant stated that the Landlord refused to give her a written tenancy agreement, but he did give a receipt to her for the money she paid him for pad rent for January 2020, which was provided into evidence. The Tenant paid $200.00 on December 28, 2019, as well as $200.00 on January 3, 2020. The Tenant stated that the Landlord promised her 24 hour vehicle access to park her vehicle beside her trailer, but shortly after she moved in, this option was revoked by the Landlord. The Tenant stated this was a material term of her verbal tenancy agreement.

The Tenant explained that this manufactured home site was located inside of a spare lot the Landlord owned. Inside this spare lot was also a car dealership and long term RV and vehicle storage. The property/lot was fenced and gated and access was limited due to how the vehicles were arranged on the car lot. The Tenant stated she agreed with the Landlord to be able to stay there, month-to-month, indefinitely. The Tenant stated that she moved into her trailer on the lot on January 2, 2020, and shortly after she arrived, her waterline froze, the Landlord refused to fix it, and the Tenant lost the ability to come and go from her trailer with her vehicle.

The Tenant explained that she was promised the ability to pull up to her trailer, in the corner of the car lot, and park her car, without access limitations. The Tenant stated that after she moved in on January 2, 2020, the Landlord refused to move vehicles out of the way so that she could park near her trailer. The Tenant stated that as a result of this, the only way she could come and go from her trailer, was to park in a dark, dangerous alley and walk through the empty lot or else park her car inside the car lot, behind a wall of cars, without the ability to leave after the car dealership closed around 5pm each night. The Tenant stated that the Landlord’s failure to deliver on parking was so critical,

that she couldn't do without it, and after 7 days of living in her trailer on the lot, she vacated, and got rid of her trailer, on January 9, 2020.

The Tenant is seeking the return of the pad rent she paid for January 2020, in the amount of $400.00. The Tenant provided copies of letters she gave to the Landlord but did not explain when and how she provided these to the Landlord, nor did she explain the importance of the letters at the hearing.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. In this instance, the burden of proof is on the Tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act,* regulation, or tenancy agreement on the part of the Landlord. The Tenant must also provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did everything possible to minimize the damage or losses that were incurred.

A Tenant may end a tenancy for breach of a material term but the standard of proof is high. It is necessary to prove that there has been a significant interference with the use of the premises. To determine the materiality of a term, I must focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach.

It falls to the person relying on the term, in this case the Tenant, to present evidence and argument supporting the proposition that the term was a material term and that the Tenant sufficiently put the Landlord on written notice as to the materiality of the issue and the consequences. A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. The question of whether or not a term is material and goes to the root of the contract must be determined in every case in respect of the facts and circumstances surrounding the creation of the tenancy agreement in question. It is entirely possible that the same term may be material in one agreement and not material in another.

I turn to *Policy Guideline #8 Unconscionable and Material Terms* which states the following:

> *To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:*

> *• that there is a problem;*
> *• that they believe the problem is a breach of a material term of the tenancy agreement;*
> *• that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*
> *• that if the problem is not fixed by the deadline, the party will end the tenancy.*
>
> *Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof.*

I note the Tenant put some of her concerns in writing and laid out her issue with the parking, including that it was a material term of the tenancy agreement. The Tenant provided a copy of this letter she wrote to the Landlord. However, the Tenant did not explain how and when she served this to the Landlord. This is important because the person alleging the breach of the material term must give a reasonable amount of time for this issue to be fixed, *after* providing the written warning. It is not clear whether the Tenant provided this letter to the Landlord before or after she had already moved off the lot and ended her short tenancy. I do not find the Tenant has provided sufficient evidence to show she adequately served the Landlord with this Notice of breach of a material term, and provided him with a reasonable opportunity to fix the issue. I do not find the Tenant was in a position to end the tenancy, without proper 1-Month Notice.

Despite my findings thus far, I find it important to note that an arbitrator may also award compensation in situations where there is a breach of a legal or contractual right, and 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.

In this case, I accept the Tenant’s undisputed testimony that she paid $400.00 in pad rent for January, and had to move because the Landlord did not honour parking, as promised, which interfered with her use of the space. Based on the undisputed testimony and evidence, I find the Landlord breached his rental agreement with the Tenant by failing to allow her to 24 hour vehicle access to her mobile home site. Given this, I find the Tenant is entitled to some compensation for this breach. I award a nominal award of $300.00. A monetary order will be issued to reflect this award.

Conclusion

I grant the Tenant a monetary order in the amount of $300.00. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be 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*.

Dated: June 16, 2020

Residential Tenancy Branch