



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FOUR GREEN PROPERTIES INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL, MNRL, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on June 19, 2020 (the “Application”). The Landlord sought the following:

- Compensation for damage caused by the tenant, their pets or guests to the unit, site or property;
- To recover unpaid rent; and
- Reimbursement for the filing fee.

The Agent attended the hearing for the Landlord. Nobody attended the hearing for the Tenant. I explained the hearing process to the Agent who did not have questions when asked. The Agent provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenant did not. I addressed service of the hearing package and Landlord’s evidence.

The Agent testified that the hearing package and evidence were sent to the Tenant at the site by registered mail on June 19, 2020. The Landlord submitted a receipt for this with Canada Post tracking information for Tracking Number 1. I looked Tracking Number 1 up on the Canada Post website which shows a notice card was left in relation to the package June 23, 2020.

Based on the undisputed testimony of the Agent, documentary evidence and Canada Post website information, I find the Tenant was served with the hearing package and evidence in accordance with sections 81(c) and 82(1)(c) of the *Manufactured Home Park Tenancy Act* (the “Act”). Pursuant to section 83(a) of the *Act*, the Tenant is

deemed to have received the package June 24, 2020. I also find the Landlord complied with rule 3.1 of the Rules of Procedure in relation to the timing of service.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Agent was given an opportunity to present relevant evidence and make relevant submissions. I have considered all documentary evidence and oral testimony of the Agent. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for damage caused by the tenant, their pets or guests to the unit, site or property?
2. Is the Landlord entitled to recover unpaid rent?
3. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence. The tenancy started January 01, 2019 and is for a fixed term ending December 31, 2020. Rent was originally \$298.00 per month. Rent is due on the first day of each month. The agreement includes a late payment fee of \$25.00 and "cheque return fee" or NSF fee of \$25.00. The agreement is signed by the Tenant and for the Landlord.

The Agent testified that rent has been \$300.00 per month since January 01, 2020.

The Landlord sought \$73.50 for damage. The Agent testified that the Landlord had to have someone attend and replace a valve because the Tenant failed to maintain the property and a water line into the home on the site froze and broke. The Landlord submitted an invoice for this.

The Agent testified that the Tenant failed to pay rent for April, May and June but subsequently paid some rent. The Agent testified that the Tenant incurred NSF and late fees. The Agent testified that \$900.00 in rent is outstanding and \$105.00 in NSF and late fees is outstanding. The Agent testified that the Tenant did not have authority under the *Act* to withhold rent. The Landlord submitted a statement of account.

Analysis

Section 7 of the *Act* states:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Section 26(3) of the *Act* states:

(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.

Section 20 of the *Act* states:

20 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 5(1) of the *Manufactured Home Park Tenancy Regulation* states:

5 (1) A landlord may charge any of the following non-refundable fees...

(c) a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent...

(2) A landlord must not charge the fee described in paragraph (1) (d) unless the tenancy agreement provides for that fee.

Based on the undisputed testimony of the Agent and invoice, I am satisfied the Tenant failed to maintain the property which caused a water line into the home on the site to freeze and break. I am satisfied based on this that the Tenant breached section 26(3) of the *Act*. I am satisfied based on the undisputed testimony of the Agent and invoice that the Landlord had to have someone attend and replace a valve. I am satisfied based on the invoice that this cost \$73.50. I am satisfied this amount is reasonable and note that the Tenant did not appear at the hearing to dispute this claim. I award the Landlord the \$73.50 sought.

Based on the written tenancy agreement and undisputed testimony of the Agent, I am satisfied the Tenant is required pursuant to the tenancy agreement to pay \$300.00 in rent per month by the first day of each month.

Based on the undisputed testimony of the Agent, I am satisfied the Tenant has failed to pay \$900.00 in rent. Based on the undisputed testimony of the Agent, I am satisfied the Tenant did not have authority under the *Act* to withhold rent. Therefore, the Tenant owes the Landlord \$900.00 in rent and the Landlord is awarded this amount.

The tenancy agreement sets out a \$25.00 late fee and "cheque return fee" or NSF fee. Based on the Agent's undisputed testimony, I am satisfied the Tenant has incurred \$105.00 in such fees. The Landlord is entitled to collect these amounts and is awarded the \$105.00 sought.

Given the Landlord was successful in the Application, I award the Landlord \$100.00 as reimbursement for the filing fee pursuant to section 65(1) of the *Act*.

In total, the Landlord is entitled to \$1,178.50 and is issued a Monetary Order for this amount pursuant to section 60 of the *Act*.

Conclusion

The Landlord is entitled to monetary compensation in the amount of \$1,178.50 and I issue the Landlord a Monetary Order in this amount. This Order must be served on the Tenant and, if the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: July 28, 2020

Residential Tenancy Branch