



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNDCT, PSF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on March 8, 2021 (the "Application"). The Tenant applied for the following relief, pursuant to the *Manufactured Home Park Tenancy Act* (the "Act"):

- an order to provide services or facilities required by tenancy agreement or law;
- a monetary order for damage or compensation; and
- an order granting recovery of the filing fee.

The Tenant stated that she served the Application and documentary evidence to the Landlord. The Landlord's Counsel confirmed receipt. Therefore, I find these documents were sufficiently served pursuant to Section 82 of the Act.

The Landlord's Counsel stated that the Landlord's documentary evidence was served to the Tenant by mail on June 8, 2021. The Tenant stated that she has not yet received the Landlord's documentary evidence.

Preliminary Matters

According to the Tenancy Branch Rules of Procedure 3.15 Respondent's evidence provided in single package;

Where possible, copies of all of the respondent's available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence should be served on the other party in a single complete package. The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

In this case, the Landlord's counsel stated that the Landlord's documentary evidence was mailed to the Tenant on June 8, 2021. As such Sections 82 and 83 of the Act,

documents are deemed served 5 days later or June 13, 2021, which is only four days prior to the hearing. I find that the Landlord served their documentary evidence to the Tenant late, contrary to the Rules of Procedure 3.15 and therefore will not be considered in this decision.

The Parties were given an 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 Residential Tenancy Branch Rules of Procedure (Rules of Procedure). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Tenant entitled to an order to provide services or facilities required by tenancy agreement or law, pursuant to Section 55 of the *Act*?
2. Is the Tenant entitled to a monetary order for damage or compensation, pursuant to Section 60 of the *Act*?
3. Is the Tenant entitled to recover the filing fee, pursuant to Section 65 of the *Act*?

Background and Evidence

The parties agreed to the following; the tenancy began in June 2017 after the Tenant purchased the Mobile Home. The Tenant is required to pay a pad rent to the Landlord in the amount of \$520.00 which is due on the first day of each month.

The Tenant stated that sometime in September of 2019, she noticed black mould in a closet of her Mobile Home. The Tenant stated that she immediately contacted a contractor who attended the inspect the Mobile Home. The parties agreed that results of the inspection determined that the ground on the rental pad was dropping in some areas, which was causing the Mobile Home to sink. The parties agreed that the Tenant notified the Landlord immediately and that the Landlord took action to lift and re-level the Mobile Home.

The Tenant stated that the Contractor also determined that there was significant damage to the Mobile Home as a result of the skylight opening up due to the dropping of the rental pad beneath the Mobile Home. The Tenant stated that she contacted her Insurance company who stated that she was not covered for loss as the sinking of the rental pad was the cause of the damage.

The Tenant is claiming \$24,149.70 in relation to the repairs to the Mobile Home as a result of water damage caused by the sinking rental pad causing an opening in the skylight, which allowed rainwater to enter, damaging the Mobile Home. The Tenant stated that it is the Landlord's responsibility to maintain the rental pad. The Tenant provided a copy of the invoice, and pictures of the damage in support.

The Landlord's Counsel stated that the Landlord took action to remedy the situation by paying for the cost of re-leveling the Mobile Home in a timely manner after being notified of the issue. The Landlord's Counsel stated that the Mobile Home was placed on the pad in 1981 and there has been alterations made since, such as the addition of a deck. The Landlord's counsel stated that the Tenant is responsible for maintaining and inspecting the Mobile Home and that the significant damages noted by the Tenant ought to have been apparent to the Tenant sooner, which may have minimized the loss.

The Landlord's Counsel stated that the Landlord is responsible for the rental pad and that the Landlord took immediate action to repair the issue once the Landlord was notified of the issue by the Tenant. Furthermore, the Landlord's Counsel questions the Tenant's downspouts as being a potential source of the problem. Lastly, the Landlord's Counsel stated that the Mobile Home is located next to a River, therefore, the Tenant should have been more diligent with respect to inspecting the foundation of the Mobile Home.

Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

With respect to the Tenant's Application for an order to provide services or facilities required by a tenancy agreement or law, I find that the Tenant has provided insufficient evidence to demonstrate that the Landlord has not provided a service or facility. As such, I dismiss this portion of the Tenant's Application.

In relation to the monetary compensation sought by the Tenant, Section 60 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of

probabilities. Awards for compensation are provided for in sections 7 and 60 of the *Act*. Pursuant to Residential Tenancy Policy Guideline #16 an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

According to Section 26(1) of the *Act*, a landlord must;

- (a) provide and maintain the manufactured home park in a reasonable state of repair, and
 - (b) comply with housing, health and safety standards required by law.
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the manufactured home site and in common areas.
 - (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.
 - (4) A tenant is not required to make repairs for reasonable wear and tear.
 - (5) A landlord is not required to maintain or repair improvements made to a manufactured home site by a tenant occupying the site, or the assignee of the tenant, unless the obligation to do so is a term of their tenancy agreement.
 - (6) A landlord's obligations under subsection (1) (b) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

The Tenant is seeking monetary compensation for damage in the amount of \$24,149.70. In this case, I find that it is the Landlord's responsibility to maintain Manufactured Home Park in a reasonable state of repair. I find that the Tenant has provided sufficient evidence to demonstrate that the damage caused to the Mobile Home was due to the fact that the rental pad was sinking in some areas, resulting in the Mobile Home to slope, and the skylight opening up, allowing rainwater to enter the Mobile Home. As such, I find that the Landlord has breached the *Act* by not maintaining the rental pad being occupied by the Tenant.

I find that the Landlord is not responsible for maintaining the Mobile Home itself. Based on amount of loss being claimed by the Tenant, the pictures of the damage, and the scope of the work completed, I am not satisfied that the Tenant mitigated their loss by inspecting the Mobile Home regularly to ensure it is in reasonable condition. I find that the Tenant ought to have noticed and acted sooner to repair the damage, preventing further loss.

In light of the above, I find that the Tenant is entitled to 20 percent of their monetary claim ($\$24,149.70 \times 0.2 = \$4,829.94$). Seeing as the Tenant was partially successful in their Application, I also find that the Tenant is entitled to the return of the \$100.00 filing fee.

Pursuant to Section 60 of the Act, I grant the Tenant a monetary order in the amount of **\$4,929.94**.

Conclusion

The Tenant has established an entitlement to monetary compensation and has been provided with a monetary order in the amount of **\$4,929.94**. The order should be served to the Landlord as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

Dated: June 21, 2021

Residential Tenancy Branch