



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1296411 B.C. LTD. DBA OGOPOGO MOTEL AND RV
PARK and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, RPP, FFT

Introduction

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

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 60;
- an order requiring the landlord to return the tenant's personal property pursuant to section 58;
- authorization to recover his filing fee for this application from the landlord pursuant to section 65.

Both parties attended the hearing via conference call and provided affirmed testimony.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

At the outset, both the tenant and the landlord confirmed during extensive discussions that the named landlord, E.S. was an agent for the numbered company and not the landlord. On this basis, the tenant's application was amended by consent by both parties to remove E.S. as a named landlord.

Discussions with both parties resulted in the tenant amending his application for dispute. The tenant stated that the listed items for return of personal property now only includes the tenant's fence and part of the decking for a value of \$3,200.00. As such, the tenant's monetary claim is now lowered by this amount to \$21,000.00.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation and recovery of the filing fee?

Is the tenant entitled to an order requiring the landlord to return the tenant's personal property?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenant claims that the landlord has illegally evicted him from his own manufactured home without proper notice to end the tenancy; no 12 months notice; locked out of the park and cut off from water and electricity. The tenant stated that he took his motor home for repairs on July 30, 2021 and returned on August 7, 2021 to find his deck, fencing and bbq removed and damaged.

The tenant seeks a monetary claim of \$21,100.00 which consists of:

\$9,600.00	No 12 Months Notice
\$10,000.00	Illegal Lockout of Property
\$1,400.00	Compensation, Destroyed personal property deck/fencing
\$100.00	Filing Fee

The tenant seeks compensation of \$9,600.00 as the landlord failed to give proper 12 months notice to end the tenancy. The tenant stated this claim is based on 12 months of \$800.00 monthly rent. The tenant stated that he was not served with a 12 month notice and should be compensated for not being served with a notice under section 42 of the Act. The landlord confirmed no 12 month notice was served to the tenant.

The tenant seeks compensation of \$10,000.00 for being illegally locked out of the park. The tenant stated this was compensation for not being served with a proper notice to end tenancy.

The tenant seeks compensation of \$3,200.00 for the landlord removing/destroying his personal property consisting of a deck and partial fencing. The tenant stated the landlord removed the fencing and deck while he was out servicing his motor home. The tenant stated that when he returned on August 9, 2021 both the deck and fencing were still present. The tenant now states that the deck and fencing were removed/destroyed by the landlord.

The landlord disputes the tenant's claim arguing that the tenant vacated the premises with his motor home and personal vehicle on July 31, 2021 without any notice to the landlord leaving a BBQ, fencing and deck. The landlord stated that no part of the fencing, bbq and deck were removed or destroyed by the landlord or his agents and refers to the tenant's submitted photograph evidence of the fencing, deck and BBQ when they were still present. The tenant confirmed that these photographs were taken on August 9, 2021. The landlord stated that no further action has been taken by the landlord for the tenant's rental site since July 31, 2021.

The tenant seeks an order for the landlord to return the personal property of the tenant which consists of Deck Lumber/labour/Fencing and in the alternative compensation for its stated value. The tenant stated that the estimated value based on the material to build and labour equals \$1,400.00.

The landlord disputes the tenant's claim arguing that the tenant received a letter giving notice to vacate the RV Park. The landlord stated that the tenant appeared to vacate the premises by removing his motor home and personal vehicle. The landlord stated that the tenant did not provide any notice to the landlord. The landlord argues that the tenant did not give any notice of any issues until 48 days after July 31, 2021 in the form of the tenant's application for dispute. The landlord stated prior to this no issues were reported to the landlord. The landlord stated that since July 31, 2021 nothing has been done or removed from the tenant's previous rental site as shown by the tenant's submitted photographs taken on August 9, 2021.

Analysis

Section 60 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, I find on a balance of probabilities based upon the undisputed affirmed evidence of both parties that the landlord did not serve the tenant with a notice to end tenancy under section 42 of the *Act*. As such, the tenant is not entitled to compensation

under section 44 of the Act. The tenant's request for compensation of \$9,600.00 for not being served with a notice to end tenancy is dismissed without leave to reapply.

Section 44 states in part that a landlord who give a notice to a tenant must pay an amount not more than the monetary limit for claims under Section 89 (2) (q.2). The tenant seeks compensation for the illegal lockout of the property is dismissed. I also note that Section 44 is the only provision provided under the Act to compensate a tenant who receives a notice to end tenancy under section 42 of the Act. The tenant's request for compensation of \$10,000.00 is dismissed without leave to reapply.

Section 58 (1) (e) of the Act states in part, that the director may make any order that personal property seized or received by a landlord contrary to this Act or a tenancy agreement must be returned.

In this claim the tenant claims that the landlord removed/destroyed the tenant's belongings a deck and fencing. The landlord has disputed this claim arguing that the tenancy ended on July 31, 2021 and that no items were removed or destroyed by the landlord as of the date of this hearing. The landlord referred to the tenant's photograph evidence confirmed taken on August 9, 2021 which shows the tenant's belongings still on the site. The landlord argued that the tenant was free to remove any and all personal items from the site. On this basis I find that the tenant has failed to provide sufficient evidence to satisfy me that the landlord removed/destroyed the tenant's personal property on the site. This portion of the tenant's claim is dismissed. I also find that as the tenant has failed to provide any supporting evidence of the landlord removing/destroying the noted items, the tenant's monetary claim for compensation is also dismissed without leave to reapply.

Conclusion

The tenant's 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: October 15, 2021

Residential Tenancy Branch