



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Riverdale Trailer Court LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes PSF OLC MNDC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on November 19, 2021. The Tenant applied for multiple remedies pursuant to the *Residential Tenancy Act* (the "Act").

The Landlord and the Tenant both attended the hearing and provided affirmed testimony. Both parties confirmed they understood Rule 6.11. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The Landlord acknowledged receipt of the Tenant's application and evidence package. The Landlord stated that he sent the Tenant a copy of his evidence by registered mail on October 14, 2021, addressed to the rental unit. The Tenant stated that she never got the package. As stated in the hearing, the Landlord mailed this evidence late. The Landlord should have ensured the Tenant received the evidence no later than 7 days before the hearing, and should have allowed 5 days for mail delivery. The Landlord significantly missed this window. I find the Landlord's evidence is not admissible.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenant applied for multiple remedies under the *Act*, a number of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, and after the Tenant explained that the most important issue for her was her claim for monetary compensation, I determined that the most pressing and related issue deals with the Tenant's claim for monetary compensation. As a result, I exercised my discretion to dismiss all of the grounds on the Tenant's application, with leave to reapply, with the exception of the following claim:

- I want compensation for my monetary loss or other money owed

Issues(s) 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 rents a manufactured home pad for \$537.89 per month. She stated she has lived at this home site for 12 years and owns her manufactured home which sits on the pad.

The Tenant explained that in the early fall of 2020, she fell through the floor of her home, and discovered that her subfloor was rotten. The Tenant stated that she immediately contacted her insurance company, who initiated a claim. The Tenant stated that following this, the insurance company came to her home site, went under her home, and saw that she had a plumbing leak which caused her floors to rot over time. The Tenant also explained that alongside this plumbing/flooring issue, the contractors discovered a sinkhole under the home, on the home pad, about 3 feet wide by 3 feet deep. The Tenant also explained that the contractors explained that they would need to re-level the home, including repair and replace 8 foundation pillars, which hold the house up. The Tenant explained that many of the existing pillars were very old, and were starting to fail after many decades.

The Tenant stated that the insurance company paid for all of the repairs to the plumbing, the floor, and the pillar repair. The Tenant stated that her cost was \$500.00 for the deductible, and the rest was covered by her insurance. The Tenant is seeking \$770.00 as compensation which she calculated by taking the invoice for 8 replacement pillars and separating out the cost of 2 of them, which she feels the landlord should pay for. The Tenant feels the Landlord should have to pay for 2 of 8 of the replacement pillars because 2 of them were right next to the sinkhole that opened up on her home pad, and the Landlord is responsible for maintaining the home pad.

The Landlord stated that he does not feel he should be liable for the Tenant's insurance deductible because this whole claim was initiated by the Tenant due to a flood. The Landlord stated that it is not his responsibility to deal with flooding in the Tenant's unit, nor is it his responsibility to provide or maintain the pillars which support the manufactured home. The Landlord acknowledged that, as per the tenancy agreement, he is responsible for home pad maintenance. The Landlord pointed out that the Tenant's insurance company(contractors) told him about the small sinkhole around October 14, 2020, and he had the hole filled and fixed within 5 days. Subsequent to this, the Tenant's insurance was able to continue their restoration work on the Tenant's home, which involved rebuilding 8 of the decaying pillars, relevel the whole home, and repair the water damage caused by the leak.

Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows:

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 in sections 7 and 67 of the *Act*. Accordingly, 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 whatever was reasonable to minimize the damage or loss.

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.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

After reviewing the totality of the evidence, and testimony before me, I am mindful that the Tenant is claiming \$770.00 on this application. However, she acknowledged that this was not what her actual costs were, as she had to pay a deductible of \$500.00, and the insurance company paid the rest.

I also note the Tenant called her insurance company, after discovering a rotten floor board, and water damage in her manufactured home. I accept that the maintenance of the home itself is not the responsibility of the Landlord and that only the home pad maintenance is the Landlord's responsibility. After the Tenant had initiated a claim with the insurance company for her floor/water damage, it was discovered that there were issues with a sinkhole, and some support pillars under the home.

Having reviewed this matter, and considered the testimony and evidence, I find there is insufficient evidence that any of the Tenant's insurance claim was a result of neglect or mismanagement from the Landlord or that the damage to the Tenant's home/structure was related to the sink hole found nearby. In fact, the Landlord quickly filled the small sinkhole that was discovered on the home pad within 5 days of finding out, which allowed the Tenant's insurance (and related contractors) to resume and finish all other work with respect to rebuilding 8 pillars, releveling the home, and repairing the water leak/floor damage.

I do not find the Landlord is liable for the deductible on the Tenant's insurance, or for any losses she incurred as a result of this insurance claim. I find the claim was largely related to components which the Tenant is liable for, and the Tenant should bear these costs.

I dismiss the Tenant's application, without leave.

Conclusion

The Tenant's 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: November 19, 2021

Residential Tenancy Branch