Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MJB Auto & Equipment Sales and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant under the *Manufactured Home Park Tenancy Act* (the *Act*), seeking:

- Compensation for monetary loss or other money owed; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 1:30 PM on December 7, 2021, and was attended by the Tenant and the Landlord, both of whom provided affirmed testimony. The Landlord acknowledged receipt of the Notice of Dispute Resolution Proceeding Package from the Tenant, which includes a copy of the Application and the Notice of Hearing, as well as the Tenant's evidence package. As the Landlord acknowledged receipt and raised no concerns with regards to the date(s) or method(s) of service, I find that the Landlord was sufficiently served with he above noted documents in accordance with the *Act* and the Residential Tenancy Branch Rule of Procedure (the Rules of Procedure). At the hearing the Landlord stated that they had not served any evidence on the Tenant or the Residential Tenancy Branch (the Branch), for consideration at the hearing as the Landlord did not believe the *Act* applies and had concerns about several errors in the Tenant's Application, which they thought might render the Application null and void. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The parties were advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over one another and to hold their questions and responses until it was their opportunity to speak. The Parties were also

advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and the parties confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the Tenant, a copy of the decision and any orders issued in their favor mailed to the mailing address provided at the hearing. At the request of the Landlord, a copy of the decision will be emailed to them at the email address provided in the Application and confirmed at the hearing.

Preliminary Matters

Preliminary Matter #1

The Landlord stated that the address listed by the Tenant as the rental address in the Application is incorrect, as that was a commercial property adjacent to the property where the site was located, and that in any event, they had sold that property several years ago. The Tenant stated that they had made an error in the recording of the address, as they didn't realize that the two properties, both owned and operated by the Landlord at the start of their tenancy, had different street addresses.

The Landlord provided the correct street address for the property where the site is located, and the Tenant agreed it was correct. Although the Landlord stated that there is no site map and that the sites on the property are not numbered, they stated that the site previously occupied by the Tenant and the Tenant's travel trailer was approximately the 3rd site. As a result, the parties agreed that the site number is 3, as set out in the Application.

Despite the Tenant's error with regards to the rental address, there was no confusion or disagreement between the parties that the Application was filed in relation to a tenancy agreement between them for a site located at the street address provided by the Landlord at the hearing. As a result, I found it reasonable and appropriate to amend the Application at the hearing, pursuant to rule 4.2 of the Rules of Procedure.

Preliminary Matter #2

There is no written tenancy agreement and neither the Landlord nor the Tenant were certain whether the Landlord under the tenancy agreement was the corporation named in the Application or the owner of the corporation, D.M., who appeared at the hearing. As a result, the Application was amended pursuant to rule 4.2 of the Rules of Procedure and Residential Tenancy Policy Guideline #43, to name both D.M. and D.M. doing business as the listed corporation.

Issue(s) to be Decided

Is the Tenant entitled to compensation for monetary loss or other money owed?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

Although the parties disputed whether the *Act* applies, the parties agreed that the Tenant rented a site with sewer and electricity connections from the Landlord, and lived in a travel trailer on the site for approximately five years. The Tenant referred to the site as a manufactured home site and argued that the *Act* applies as they paid rent and lived there for an extended period as their only form of accommodation. The Landlord denied that the *Act* applies and referred to the site as a campsite located on their 10 acre hobby farm. Although the Landlord agreed that there were approximately 5 sites on the property, they referred to them as campsites and argued that in any event the *Act* should not apply as the Tenant parked a travel trailer, not a manufactured home with a foundation, on the site.

The parties agreed that rent in the amount of $400.00 was due on the first day of each month and that no taxes, such as GST, were charged.

The parties agreed that on November 1, 2021, after a discussion about the manner in which rent was to be paid that day, the Landlord moved the Tenant's travel trailer out of the site with a fork-lift, without prior notice to the Tenant or the Tenant's consent. As a result, the Tenant stated that they were required to immediately secure an alternate location for the trailer, causing them a significant amount of stress, inconvenience, and financial loss. The Tenant stated that as a result of the Landlord's actions, the trailer itself was damaged, along with many of the Tenant's personal possessions, as they were unable to secure them before the trailer was moved. The Tenant therefore sought

$1,200.00 in compensation for the inconvenience, stress, and financial loss caused by the need for them to secure a new location for their trailer without any notice, unlawfully ending their tenancy, and loss of quiet enjoyment, and the following amounts for damage to the trailer and their possessions:

- $150.00 for a water hose fitting;
- $2,400.00 in damage to the trailer frame and rear jack stands;
- $500.00 for a broken TV;
- $85.00 for a broken lamp; and
- $90.00 for a broken coffee maker.

The Tenant also sought $250.00 for cleaning, as they stated that all of their unsecured items fell to the ground when the trailer was moved by the Landlord, causing a significant mess, and recovery of the $100.00 filing fee. In support of their Application the Tenant submitted 11 photographs of the damage to the trailer allegedly cause by the Landlord, and the site.

Although the Landlord argued that they were careful moving the Tenant's trailer, experienced at moving trailers with their forklift, and had special forklift attachments for this purpose, they could not guarantee that they had not damaged any of the Tenant's possessions as usually people have the opportunity to secure their belongings prior to a move, which was not the case here. The Landlord stated that while they do not think that they damaged the trailer or the Tenant's belongings during the move, it is impossible to tell, as the Tenant did not take the photographs submitted for my review and consideration of the trailer until after it had already been towed away by the Tenant to another location. The Landlord stated that if there had been damage, the Tenant should have immediately alerted them and taken photographs before moving the trailer, so that it would be clear what damage, if any, had occurred while they moved the trailer with the forklift, versus when the Tenant towed it to an alternate location. The Landlord suggested that it is also likely the Tenant damaged the trailer by towing it away with the slide out, which is dangerous and can be damaging to the slide and/or trailer in general.

Although the Tenant could not be sure when the pictures submitted were taken, they agreed that it was several days after the trailer was moved by them to an alternate location and during the dispute resolution application process. They also acknowledged towing the trailer away with the slide out as they said that it had not been working in a few years and due to the Landlord's actions, they did not have time to resolve the issues before it had to be moved.

While the Tenant initially stated that they owned the travel trailer, through the course of the hearing it became apparent that the travel trailer is owned by the Tenant's mother, and that the Tenant has been paying their mother approximately $300.00 per month to live in the trailer. The Tenant stated that it is their belief that the trailer was purchased new from a dealership by their mother in 2008 or 2009. The Tenant also suggested that damage suffered to the trailer itself may be before ICBC for resolution under their mother's insurance.

Analysis

Although the parties disputed whether a tenancy under the *Act* existed between them, for the following reasons I find that one did. Although the Landlord argued that the Tenant resided in a travel trailer with wheels, not a manufactured home with a foundation, the *Act* defines a manufactured home as a structure, other than a float home, whether or not ordinarily equipped with wheels, that is designed, constructed or manufactured to be moved from one place to another by being towed or carried, and used or intended to be used as living accommodation. I am satisfied that the Tenant's travel trailer meets this definition. The Landlord also argued that they have a 10 acre hobby farm with approximately 5 campsites, not a manufactured home park with manufactured home sites. However, the *Act* defines a manufactured home park as the parcel or parcels, as applicable, on which one or more manufactured home sites that the same landlord rents or intends to rent and common areas are located. It also defines a manufactured home site as a site in a manufactured home park, which site is rented or intended to be rented to a tenant for the purpose of being occupied by a manufactured home.

In addition to the above, Residential Tenancy Policy Guideline (Policy Guideline) #9 states that all the circumstances surrounding the occupation of the site need to be considered when assessing if a tenancy under the *Act* exists. It goes on to say that the *Act* is intended to provide regulation to tenants who occupy the park with the intention of using the site as a place for a primary residence and not for short-term vacation or recreational use where the nature of the stay is transitory and has no features of permanence.

There was no disagreement that the Tenant had occupied the site year-round as their primary residence for a period of approximately 5 years, and that the travel trailer had not been moved from the site in that time. The parties were also in agreement that the site had sewer and water connections and that there were other long term tenants in other sites on the property.

Based on the above, I am satisfied that the site rented to the Tenant on the Landlord's property for their travel trailer, which I have already found above meets the definition of a manufactured home under the *Act*, constitutes a manufactured home site in a manufactured home park under the *Act*, despite the Landlord's definition of the site as a "campsite". It is clear from the testimony of the parties at the hearing that the site was rented to the Tenant on a long-term basis as a primary residence, not for short term vacation or recreational use, and that it has services meant for more permanent housing, like electrical and sewer hookups. Further to this, Policy Guideline #9 sets out that even when located in an RV park or campground, a site may still meet the definition of a manufactured home site under the *Act* where the recreational vehicle is a permanent home and where the vehicle and the site are occupied for long continuous periods. Finally, the parties agreed that rent is charged by month, not daily or weekly, and that no GST is charged.

Having determined that a tenancy agreement under the *Act* existed between the parties, I will now turn to the substantive matters claimed by the Tenant in their Application. The Tenant sought monetary compensation in the amount of $4,775.00 for damage to the travel trailer they resided in and their personal possessions, as a result of the Landlord moving their travel trailer from the site with a fork lift without their knowledge or consent, cleaning costs as a result of this move, which they argue resulted in unsecured items being strewn around the trailer, compensation for loss of use and quiet enjoyment of their site and the inconveniences suffered as a result of the Landlord's unlawful removal of their travel trailer from the site, and recovery of the filing fee.

Section 7 of the *Act* states that 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. Policy Guideline # 16 states that the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred and that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. Policy Guideline #16 also sets out a 4 part test for determining whether compensation for damage is due, as follows. The arbitrator must be satisfied on a balance of probabilities that:

- A party to the tenancy agreement has failed to comply with the Act, regulations or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss has proven 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.

Sections 22(b) and (c) of the *Act* state that a tenant is entitled to quiet enjoyment including, but not limited to, freedom from unreasonable disturbance and exclusive possession of the manufactured home site subject only to the landlord's right to enter the manufactured home site in accordance with section 23 *[landlord's right to enter manufactured home site restricted]*. Further to this, section 23 of the *Act* sets out restrictions on a landlord's right to enter a manufactured home site that is subject to a tenancy agreement under the *Act* and sections 37-46 set out the requirements for landlords and tenants to end a tenancy.

The parties agreed at the hearing that on November 1, 2021, the Landlord removed the Tenant's travel trailer from the site with a forklift, placing it in a nearby parking lot, without any prior notice to the Tenant or the Tenant's consent. In doing so I find that the Landlord breached sections 22(b), 22(c), and 23 of the *Act*, by entering the Tenant's manufactured home site without authority to do so under the *Act*, causing the Tenant a significant loss to the quiet enjoyment of their manufactured home and site, and effectively ending the tenancy in a manner not permitted under the *Act*. The Tenant stated that this loss of quiet enjoyment, the Landlord's failure to adhere to the requirements of the *Act* in terms of ending their tenancy, and the urgent need for them to immediately find an alternate location for their travel trailer, which is their primary residence, caused them significant hardship, distress, and loss of quite enjoyment, and sought $1,200.00 in compensation as a result.

As set out above, I am satisfied that the Landlord breached several sections of the *Act*, and based on these breaches, which I find to be exceptionally egregious, and the Tenant's own testimony, I am satisfied that the Tenant suffered a loss of not less than $1,200.00 for the above noted reasons. As the Landlord did not give the Tenant any prior notice of the removal of their travel trailer from the site, I find that the Tenant had no opportunity to mitigate these losses, by perhaps finding suitable alternate accommodation in advance or arranging for the transportation of their travel trailer themselves. I therefore award the Tenant the full amount claimed of $1,200.00, which I find very reasonable and conservative under the circumstances.

Having made these findings, I will now turn to the Tenant's claims for damage to their personal possessions and cleaning costs. Although the Landlord stated that they were careful moving the Tenant's trailer with their fork lift, something they have been doing for over 30 years, and did not believe that they had damaged the Tenant's possessions,

they acknowledged that it was possible and that normally a trailer's occupant(s) would have advance notice to secure their belongings prior to a move. The Tenant stated that their TV, lamp, and coffee maker we all damaged, and that significant cleaning was required to the trailer as a result of their inability to secure their belongings prior to the trailer being moved, as any unsecured items had fallen to the ground, causing a significant mess. The Tenant sought $500.00 for the TV, $85.00 for the lamp, $90.00 for the coffee maker, and $250.00 for cleaning. However, they did not submit any proof of ownership of these items, any proof that these items were in fact damaged, or any proof that they are valued at the amounts given. The Tenant also did not submit any documentation of the mess to substantiate a $250.00 cleaning valuation.

Despite the above, I am none the less satisfied that the Landlord breached the *Act* as set out above, that this breach likely caused at least some damage to the Tenant's personal possessions and a mess in the travel trailer as the Tenant would have been unable to secure their belongings, having not been notified of the move in advance, and given that a travel trailer with personal possession inside is generally meant to be moved via tow vehicle by way of the attached hitch, not by being loaded onto a fork lift. As a result, I grant the Tenant nominal damages in the amount of $200.00, rather than the $925.00 claimed, as I am not satisfied by the Tenant that they suffered losses amounting to $950.00, but I am still satisfied that they suffered at least some damage to personal possessions and some cleaning costs, as a result of the Landlord's unlawful removal of their travel trailer from the site.

Finally, I will turn to the Tenant's claim for $150.00 for a damaged water hose fitting and $2,400.00 for damage to the trailer frame and jack stands. Although the Tenant sought recovery of these costs, they acknowledged during the hearing that the trailer had not been seen or repaired by a professional and that the trailer belonged to their mother. They also suggested that their mother's insurance may cover damages through ICBC. As the trailer does not belong to the Tenant, I find that I cannot award the Tenant compensation for any depreciation to its value, as it is not the Tenant's belonging or asset. As there is no indication that the Tenant has paid for repairs or been invoiced by the trailer owner for these repairs, I therefore find that I am not satisfied that the Tenant has, as of the date of the hearing, suffered any monetary loss in relation to actual damage to the trailer. I therefore dismiss the Tenant's Application for these costs with leave to reapply, as I find it is premature, given their lack of ownership of the trailer, the possibility that these costs will be covered by another insurer and the fact that no repairs have been completed at the Tenant's cost or invoiced to the Tenant as of the date of the hearing.

As the Tenant was partially successful in their Application, I award them recovery of the $100.00 filing fee pursuant to section 65 of the *Act*. Pursuant to section 60 of the *Act*, I therefore award the Tenant a Monetary Order in the amount of $1,500.00 and I order the Landlord to pay this amount o the Tenant.

Conclusion

Pursuant to section 60 of the *Act*, I grant the Tenant a Monetary Order in the amount of **$1,500.00**. The Tenant is provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this decision and Order, this Order may be filed in the Small Claims Division of the Provincial Court 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: December 8, 2021

Residential Tenancy Branch