Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 6-4 Building Maintenance Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Manufactured Home Park Tenancy Act* ("Act"), for a monetary order of $14,037.79 for damage or compensation under the Act, and to recover the $100.00 cost of their Application filing fee.

The Tenants appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Landlord. The teleconference phone line remained open for over 35 minutes and was monitored throughout this time. The only persons to call into the hearing were the Tenants, who indicated that they were ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only persons on the call, besides me, were the Tenants.

I explained the hearing process to the Tenants and gave them an opportunity to ask questions about it. During the hearing the Tenants were given the opportunity to provide their evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Landlord did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenants testified that they served the Landlord with the Notice of Hearing documents by Canada Post registered mail, sent on May 17, 2021. The Tenants provided Canada Post tracking numbers as evidence of service. I find that the Landlord was deemed served with the Notice of Hearing documents in accordance with the Act. I,

therefore, admitted the Application and evidentiary documents, and I continued to hear from the Tenants in the absence of the Landlord.

Preliminary and Procedural Matters

The Tenants provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Tenants that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised them that they are not allowed to record the hearing, and that anyone who was recording it was required to stop immediately. The Tenants affirmed that they were not recording the hearing.

Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order, and if so, in what amount?
- Are the Tenants entitled to Recovery of the $100.00 Application filing fee?

Background and Evidence

The tenancy agreement submitted by the Tenants states, and in the hearing, the Tenants confirmed the following details about the tenancy agreement. The tenancy began on February 1, 2019, with a monthly rent of $750.00, due on the first day of each month. The tenancy ended when the Tenant vacated the site/park on July 31, 2021.

The Tenants submitted a monetary order worksheet containing the following claims, which we reviewed one at a time in the hearing.

	Receipt/Estimate From	For	Amount
1	[A.] Container Storage	Storage of personal belongings	$840.00
2	[S.] Propane	Tank drop off/Tank pick up	$397.79
3	Rent Jan31/19 – Jul31/19	No receipt given – chging RV rate ---It's a mobile home park	$4,500.00

4	[M.'s] RV Towing	From L.C. to Mobile Home Park	$350.00
5	[B.H.] RV&Boat Transport	Mobile Home Park to Kelowna	$450.00
6		**Subtotal**	**$6,537.79**
7		Inconvenience and Stress	$7,500.00
		Total monetary order claim	**$14,037.79**

#1 STORAGE OF PERSONAL BELONGINGS → $840.00

I asked the Tenants why they incurred this expense and why the Landlord is responsible for compensating them for this claim. The Tenants gave a general statement as to the circumstances surrounding their claims:

> The water in the park was not potable. You couldn't shower or brush your teeth. This was mentioned every month we were there, he would say 'I'll look into it.' This man, [R.D.] was only at the park on collection day. We only had one day per month to tell him what we were encountering; and what happened was, we planned to stay there. We were trying to get him to fix the water and the sewage smell.
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> When we moved, the site had to be cleaned, and we had build a shed with permission and he agreed to it. We built a shed to store our stuff in. Then we just had had enough, to be honest. I have a bad heart; I couldn't do it anymore. I had to store everything from in the shed somewhere when I tore it down. These people gave me a decent rate, I felt. I am putting the cost in there. We had to move, and we didn't have any other place to put it other than storage.
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> We're in [another city] on private property - still in the 5th wheel. There's no storage facility here, so we left the storage there. I only billed against the storage for about six months, but it was longer than that. We still have stuff in storage, but it would have been a waste of time to keep billing him.
>
> If he would have looked into the issues that we brought up to him each and every month, we'd a probably still be there. He finally did it after I referred government agents to him on the water. The gentleman who looked after the water – the septic and water guys - found the problems and he was forced to repair everything. He wouldn't do that on his own. I reported him in July, but he waited until such time as he was forced into everything. The water was a simple fix, but

> he wouldn't do it. We couldn't shower, or do anything, because it had the smell of rotten eggs. We spent hours going back and forth to [a nearby City] to friends' places or the rec center and pay to have showers. It got out of hand. My wife got a rash from the stress of it all. When you rent a place, you are supposed to have potable water. They tested the water and did it again, and it had chloroform bacteria in it and he shut it down. He made [R.D.] tell everyone to boil water. That boil water was on from then until it was fixed. We had no choice; we had to move.

#2 PROPANE TANK DROP OFF/PICK UP → $397.79

In the hearing, I asked the Tenants why the Landlord is responsible for this cost, and they said:

> We were planning to go there and stay, because we didn't want to move. We wanted a home base. Period. We were with [S.] Propane. They charge us to drop it off and pick it up. I figure it's the Landlord's responsibility, because he didn't provide us with a safe place to live. He owes all the money that I am asking for.
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> There's nothing he did to the propane tanks. But if I wasn't forced to move, I wouldn't have had to move the propane tanks.

#3 RENT JANARY 31 – JULY 31, 2019 → $4,500.00

I asked the Tenants why I should award them recovery of all of the rent they paid for their six-month tenancy, and they said:

> He's charging [recreational vehicle ("RV")] rates; $750.00 is not a manufactured home park rate - they are $325.00– $375.00 – so he's charging us this much. By law he shouldn't be able to do this, because he isn't an RV park . If you can't have potable water and the conveniences that you should have - he should supply it. This is a family park, and he was going to do a lot of work and upgrade it when we moved in. It isn't a family park and he's not going to do anything. It's filled with drug addicts and dopers and alcoholics. It's not a family park - not a safe place to live.

I asked the Tenants if they had questioned the rental rate before they agreed to the tenancy. They said:

> No tenancy agreement. All we signed was a piece of paper stating the rules. The

> neighbours have taken the Landlord to the RTB twice for illegal rent hikes and to get his money back, and he won both times. This company doesn't operate on a very honest basis. You're told one thing and you get into the park and if you complain, he says, 'I'll check into it.'
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> If you look at the texts, he sent to me. . . not very nice people to rent from. I don't even believe they should be allowed to own the park. It's ridiculous the way they treat their tenants. I didn't complain until about May about the septic smell. But as it started to warm up, the smell got worse. When you told him about the septic smell, a water problem, he checked into it for six months and never did anything.

I pressed the Tenants, asking if they had not discussed the monthly rent to begin with. They said:

> Yes, I agreed to it, but I thought I was moving into an RV park, not a mobile home park. There's a big difference. He tells everyone the same story about this is an RV park and mobile home park combined. But it isn't. It's a mobile home park. If truth be told, the 5th wheels are in there are either classed as mobile homes or they have to move out every six months, because he's not an RV park, he's a mobile home park. So, he should charge the proper rent.

#4 RV TOWING – Lake Country to Eagle Rock MH Park → $350.00

The Tenants testified that this claim is for the cost of moving their RV to the park; however, they did not explain why the Landlord should be responsible for paying for the transport of their RV to the park that they chose to live in.

#5 RV & Boat Transport – EAGLE ROCK MH PARK TO KELOWNA → $450.00

The Tenants said that this is a claim for the cost of transporting their RV from the park to their new address. However, they did not explain why the Landlord is responsible for their moving costs, other than to comment on their displeasure in the experience of living there.

#6 INCONVENIENCE AND STRESS → $7,500.00

The Tenants explained this claim, as follows:

> I took the months we were there and the crap we put up with and put a number to

it. The inconvenience … he has a manager on site who threatened me with bodily harm. He said to meet him outside and he was going to kick the shit out of me.

See the pictures showing the fence, and concrete on which it is supposed to sit. It's all busted up. It's between me and the neighbours, who [R.D.] told in 2018 that it would be fixed, but it's still there.

There's no care for tenants at all. I don't know what you're giving me, if anything, the stress for six months was bad.

The Landlord [at our current location] does everything except the propane. I use the internet a lot and one day it wasn't working well. I told the Landlord and he had Telus there the next day and it was fixed the same day. That's how a Landlord is. They're only concerned with coming to the park once a month for rent.

How can you live with no showers or drinking water? The list goes on.

$7,500 is pretty cheap for all we went through.

There was a broken water tap – it was freezing – it was finally replaced in May – four months it took. In the last month there, the electrical thing burnt up my cord.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Before the Tenants testified, I let them know how analyze evidence presented to me. I said a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Tenants must prove:

1. That the Landlord violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Tenants to incur damages or loss as a result of the violation;
3. The value of the loss; and,

4. That the Tenants did what was reasonable to minimize the damage or loss.

   ("Test")

As set out in Policy Guideline #16 ("PG #16"), "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. It is up to the party claiming compensation to provide evidence to establish that compensation is due." [emphasis added]

Under section 7 of the *Manufactured Home Park Tenancy Act*:

- a landlord or tenant who does not comply with the Act, the regulations or their tenancy agreement must compensate the affected party for the resulting damage or loss; and
- the party who claims compensation must do whatever is reasonable to minimize the damage or loss.

Under section 60 of the *Manufactured Home Park Tenancy Act*, if the director determines that damage or loss has resulted from a party not complying with the Act, the regulations or a tenancy agreement, the director may:

- determine the amount of compensation that is due; and
- order that the responsible party pay compensation to the other party.

#1 STORAGE OF PERSONAL BELONGINGS → $840.00

The Tenants' evidence is that the Landlord failed to correct a water problem at the site that went on for months, and which led the Tenants to feel they had to move, as a result. One of the Tenants' costs was having to move personal property they stored in their shed at the park to a storage facility when they moved. However, it was the Tenants' choice of to where they would move, and they had not arranged for storage at their new residence.

Further, the Tenants did not direct me to an invoice, and I could not find one or a payment receipt for this expense in their evidentiary submissions. Based on these considerations of the evidence before me, I find that the Tenants have not proven the value of this loss – step three of the Test, nor that the Tenants did what was reasonable in the circumstances to minimize the damage or loss. As such, I dismiss this claim without leave to reapply, pursuant to section 62 of the Act.

#2 PROPANE TANK DROP OFF/PICK UP → $397.79

I find that this cost is part the Tenants' living expenses, and that they would have had to have the propane tanks picked up and dropped off somewhere new, ultimately. I find that the Tenants have not provided sufficient evidence to establish that the Landlord should compensate the Tenants for this cost. Much as moving expenses are not covered in a situation like this, I find that the transportation of the propane tanks from the rental unit to the Tenants' next address is not recoverable under the Act. As such, I dismiss this claim without leave to reapply, pursuant to section 62 of the Act.

#3 RENT JANARY 31 – JULY 31, 2019 → $4,500.00

The Tenants claimed for the full rent they had paid during the six-month tenancy, rather than the amount that they asserted was fair for the services and facilities they received. I find this is an inconsistency between their claim and their testimony.

Further, in their testimony, the Tenants acknowledged that they had agreed to the rent they paid before moving in; however, they said they thought they were moving into an RV park, not a mobile home park; "But It's a mobile home park," they said. I infer from this testimony that the Tenants agreed to move in to the park without having fully inspected it first, to see if it met their expectations. They are now claiming a full refund of all the rent they paid, because they did not find out the true nature of the park before they moved in.

I find that the amount of rent a tenant pays is based on an agreement between the parties for this amount. I find from the Tenants' testimony, that they understood the amount of rent they were required to pay. That was part of the agreement they entered into, even if it was an oral agreement. If the Tenants thought the park was not providing sufficient, promised services and facilities, the Tenants could have applied for an Order requiring the Landlord to provide those facilities and services, although, they would have to prove that promises were made about the facilities and services.

However, the Tenants did not direct me to any evidence that they were promised specific services and facilities that were not provided. The Tenants said they did not have even a written tenancy agreement setting out the promises that the Parties had exchanged. However, I find that the Tenants made their agreement with the Landlord, but that they did not like what they agreed to after the fact.

I find that the Tenants have not provided sufficient evidence that they obtained no

benefit from living in the park for the six months that they were there, in order to meet their burden of proof on a balance of probabilities. As such, I dismiss their claim for a full refund of the rent they paid during the tenancy. This claim is dismissed without leave to reapply, pursuant to section 62 of the Act.

#4 RV TOWING – Lake Country to Eagle Rock MH Park → $350.00

I find that the Tenants have not provided sufficient evidence or provided a legislative authority for reimbursing this cost they incurred when they moved to the manufactured home park where they chose to live. As such, I dismiss this claim without leave to reapply.

#5 RV & Boat Transport – EAGLE ROCK MH PARK TO KELOWNA → $450.00

I find that the Tenants have not provided sufficient evidence or a legislative authority for reimbursing this cost they incurred when they moved away from the manufactured home park where they chose to live. As such, I dismiss this claim without leave to reapply.

#6 INCONVENIENCE AND STRESS → $7,500.00

Based on all the evidence before me overall, I find that the Tenants were unhappy with the conditions in the park from early in their tenancy. As noted above, PG #16 states that, “It is up to the party claiming compensation to provide evidence to establish that compensation is due.”

The Tenants acknowledged that they “put a number to” all the “crap we put up with”. However, they did not provide any additional evidence as to what complaint contributed to what amount of compensation. I find that this amount claimed is arbitrary, and therefore, that it has not been proven.
However, in this set of circumstances, I find that the Tenants have provided sufficient evidence that they suffered a loss of quiet enjoyment of their tenancy in this manufactured home park, pursuant to section 22 of the Act. They did not make this claim, specifically; however, pursuant to sections 22 and 60 of the Act and PG #16, I award the Tenants a nominal amount of **$750.00** from the Landlords.

PG #16 states:

> An arbitrator may also award compensation in situations where establishing the

value of the damage or loss is not as straightforward:

- "Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

Summary

	Receipt/Estimate From	For	Amount Awarded
1	[A.] Container Storage	Storage of personal belongings	$0.00
2	[S.] Propane	Tank drop off/Tank pick up	$0.00
3	Rent Jan31/19 – Jul31/19	No receipt given – chging RV rate ---It's a mobile home park	$0.00
4	[M.'s] RV Towing	From L.C. to Mobile Home Park	$0.00
5	[B.H.] RV&Boat Transport	Mobile Home Park to Kelowna	$0.00
7		Inconvenience and Stress	$750.00
		Total monetary order claim	**$750.00**

The Tenants were predominantly unsuccessful in their Application for compensation from the Landlord in these matters, as they failed to provide sufficient evidence to prove their claims on a balance of probabilities. However, the Tenants provided sufficient evidence to warrant an award for nominal damages of **$750.00**, for their last claim, pursuant to section 60 of the Act.

I grant the Tenants a Monetary Order of **$750.00** from the Landlord, pursuant to section 60 of the Act. Given their limited success in this Application, I decline to award the Tenants with recovery of the $100.00 Application filing fee from the Landlord.

Conclusion

The Tenants are predominantly unsuccessful in their Application, as they failed to provide sufficient evidence to prove their claims on a balance of probabilities. However, they are awarded a nominal amount from the Landlord of $750.00.

The Tenants are granted a nominal Monetary Order of **$750.00** from the Landlord for the Landlord's breach of the Tenants' right to quiet enjoyment of the site and the park.

This Order must be served on the Landlord by the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 07, 2021

Residential Tenancy Branch