



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes TT: CNR, MNDCT, DRI, PSF
 LL: FFL, OPU-DR, MNU-DR

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties pursuant to the *Manufactured Home Park Tenancy Act* (the “Act”);

The Tenants’ Application for Dispute Resolution was made on April 19, 2022 (the “Tenants’ Application”). The Tenants applied for the following relief, pursuant to the Act:

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities;
- a monetary order for damage or compensation;
- to dispute a rent increase; and
- an order that the Landlord provide a service or facility.

The Landlord’s Application for Dispute Resolution was made on May 24, 2022 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the Act:

- a monetary order for unpaid rent and utilities;
- an order of possession for unpaid rent and utilities; and
- an order granting recovery of the filing fee.

The Tenant R.C. and the Landlord attended the hearing late, however, each of them described having difficulties with the access code. At the start of the hearing, both parties confirmed service and receipt of their respective Applications and documentary evidence packages. As no issues were raised, I find these documents were sufficiently served pursuant to Section 82 of the *Act*.

Preliminary Matters

At the start of the hearing, the parties confirmed that the tenancy has since ended. As such, I find that the Tenant's claim to cancel a 10 Day Notice, to dispute and rent increase, and for an order for the Landlord to provide a service are moot and therefore dismissed without leave to reapply.

The Landlord had applied for an order of possession for unpaid rent and utilities. As the Landlord now has vacant possession of the site, I find that this claim is now moot and therefore dismissed without leave to reapply.

The hearing continued based on the monetary claims submitted by the parties. 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 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. Are the Tenants entitled to a monetary order for compensation, pursuant to Section 60 of the *Act*?
2. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 60 of the *Act*?
3. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 65 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on October 1, 2021. During the tenancy, the Tenants were required to pay a pad rent in the amount of \$600.00 and utilities in the amount of \$100.00 which were due to the Landlord on the first day of each month.

Tenants' Claim

The Tenant stated that the Landlord cut off the electricity to their trailer as the Tenants had not paid rent or utilities for the month of April 2022. The Tenant stated that they lost \$400.00 worth of food because of the fridge and freezer were not working without power.

The Tenant stated that he requires the use of oxygen to sleep and is also required to blend his food to eat. The Tenant stated that he was unable to eat and sleep in the trailer as a result of the Landlord cutting off the electricity to the trailer. As such, the Tenant stated that he is seeking a further \$400.00 as compensation.

The Tenant stated that the Landlord attempted to impose a rent increase without providing a proper notice. As such, the Tenant stated that he is seeking to recover his moving costs in the amount of \$400.00.

In response, the Landlord stated that the Tenant S.S. had indicated that the Tenants would be moving on April 15, 2022. The Landlord stated that the Tenants had not paid for rent or utilities beyond April 15, 2022. The Landlord stated that while the trailer remained in the site, she had not heard from the Tenants that they intended to continue the tenancy, therefore, she disconnected the electricity on April 17, 2022. The Landlord stated that the electricity remained disconnect until April 30, 2022 at which point the Tenants paid the remaining balance of April 2022 rent and utilities.

Landlord's Claim

The Landlord is claiming \$600.00 for loss of rent as well as \$100.00 for utilities for the month of May 2022. The Landlord stated that the Tenants' trailer remained on the site up until May 31, 2022. As such, the Landlord stated that they were unable to re-rent the site and incurred a loss of \$700.00 as a result.

The Tenant stated that they left the site on May 2, 2022 and returned on May 31, 2022 to pick up the trailer. The Tenant stated that he should not be charged with the full month of rent and utilities given they were not occupying the trailer during the month of May 2022.

If successful, the Landlord is also seeking the return of the filing fee.

Analysis

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

Tenants' Claim

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.

The Tenants are claiming \$400.00 for loss of their food as the Landlord disconnected the electricity to their trailer due to the fact that they had not paid the rent for April 2022. I find that the Landlord was not permitted to disconnect the power to the trailer. While the Landlord breached the *Act* by disconnecting the power, I find that the Tenants provided insufficient evidence to support the value of their loss such as a detailed account of what food items were lost, and a monetary amount associated with their replacement. I find that without a detailed account of how the Tenants came to their \$400.00 claim, I am unable to award the Tenants with compensation. As such, I dismiss the Tenant's claim without leave to reapply.

The Tenants are also claiming \$400.00 as the Tenant was unable to eat and sleep without electricity. As I found that the Landlord was not permitted to disconnect the electricity from April 15 to 30, 2021, I find that the Tenants are entitled to compensation in the amount of **\$50.00** which represent the return of half the utility costs for the period of time that they were without electricity. I dismiss the remaining balance of the Tenants' claim without leave to reapply.

The Tenants are also claiming \$400.00 for moving costs as a result of the Landlord attempting to impose a rent increase without proper notice. In this case, I find that the Tenants provided insufficient evidence to demonstrate that they needed to move as a result of the proposed rent increase. The Tenants could have mitigated their loss by submitting an application to the Residential Tenancy Branch for Dispute Resolution should they feel that the Landlord was increasing the rent in a fashion that contradicted the Act. Furthermore, the Tenants provided insufficient evidence to support the value of their moving costs. As such, I dismiss this claim without leave to reapply.

Landlord's Claim

The Landlord is claiming \$600.00 for loss of rent for May 2022 as well as \$100.00 for utilities for the month of May 2022. The Landlord stated that the Tenants' trailer remained on the site up until May 31, 2022.

Section 20 of the Act explains that the Tenant must pay rent when it is due under the Tenancy Agreement, whether or not the Landlord complies with this Act, the Regulations or the Tenancy Agreement, unless the Tenant has a right under this Act to deduct all or a portion of the rent. As I do not have any evidence before me that the Tenant had a right under this Act to deduct any of their rent, I find that the Tenant is in breach of Section 20 of the Act.

While the Tenant stated that they did not occupy the trailer beyond May 2, 2022 I accept that the Tenants' trailer remained on the pad until the end of May 2022. As such, I find that the Landlord was unable to re-rent the pad and incurred a loss of \$700.00 as a result.

In light of the above, I find the Landlord has established an entitlement to a monetary award for unpaid rent and utilities in the amount of **\$700.00**. Having been successful, I also find the Landlord is entitled to recover the **\$100.00** filing fee paid to make the Application.

Set-off of Claims

The Tenant has demonstrated an entitlement to a monetary award of \$50.00. The Landlord has demonstrated an entitlement to a monetary award of \$800.00.

Setting of the parties' claims, and pursuant to section 60 of the *Act*, I grant the Landlord with a monetary order in the amount of \$750.00 (\$800.00 - \$50.00).

Conclusion

The Landlord is granted a monetary order in the amount of \$750.00. The monetary should be served on the Tenants as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: August 17, 2022

Residential Tenancy Branch