Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNRL, MNDL, MNDCL

Introduction

The landlord seeks compensation pursuant to sections 20, 60, and 65 of the 67 and 38 of the *Manufactured Home Park Tenancy Act* (the "Act").

The landlord filed two applications for dispute resolution on April 27 and on June 1, 2021. This decision shall fuse the applications and deal with them as one.

Dispute resolution hearings were held on October 21, 2021, on May 5, 2022, and on October 4, 2022. The landlord, the tenant, the landlord's witness, and the tenant's advocate attended on all three occasions. At the second hearing the landlord was represented by an articling student. At some point in late August the articling student was involved in a motor vehicle accident was unable to represent the landlord. New legal counsel took conduct of the file and appeared as counsel to the landlord at the third and final hearing. The parties (except for counsel) were affirmed.

Issue

Is the landlord entitled to compensation?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure,* was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issue of this dispute, and to explain the decision, is reproduced below.

The landlord seeks the following compensation:

1. Unpaid rent in the amount of $2,984.45

The particulars of the landlord's application state the following:

> Unpaid rent for Site #10: The Tenant of Site #8 [tenant] submitted information to the RTO in which he states he had the use of Site #10 historically. I purchased the MHP in August 2020. In conversation on the 20th of August 2020, he was advised that he did not have further permission to use Site #10. He was advised to remove his belongings immediately from the carport. He continued to use the tarp tent and the shed on the Site #10 and was advised

And further particulars of the landlord's application state the following:

> Rent unpaid for Site#10: As above, the Tenant of Site #8 claimed privilege to use Site #10 without permission from previous or current owner and without paying suitable rent for the Site #10.

2. $3,500.00 for removal of landlord's personal belongings

The particulars of the application state that "Removal of my personal belongings from the Site #10 believed to be by this Tenant or at his discretion and charge (see his paragraph dated August 22, 2020') when he vacated the premises."

3. $7,810.33 for sewer lines and loss of revenue of sale of park

This aspect of the landlord's claim include compensation sought for damages allegedly caused to the park's sewer lines and for $5,380.00 in loss of revenue from not being able to sell the park at the price that the landlord wanted.

Last, the landlord made two applications for dispute resolution and paid two of the $100.00 application filing fees; she seeks to recover the cost of those fees.

In respect of the sewer line the landlord and her counsel argued that the tenant had an obligation to repair the sewer line cause by the tenant's negligence. The landlord testified that the tenant drove back and forth over the line, damaging it. The landlord attended to fix a broken water line by discovered the broken sewer line. A contractor was called in and it was discovered that the leak actually occurred on the tenant's side of the lines. Thus, it was the tenant's responsibility to repair the water lines. Emergency repairs were effected and which cost $2,373.00.

On site 8 the landlord testified that the sewer pipe was damaged from bring "driven over."

The tenant, the landlord argued, was using without authorization site 10. Over the years, though it was not his site, the tenant “crept onto the property,” developed a garden, built a shed, and stored stuff on the site (including letting others store things on the site). While the previous site owner said the tenant could mow the lawn, in exchange for letting the tenant use the garden area, the supposed permission ended there.

On April 22, 2021 the landlord asked the tenant whose “stuff” was there on site 10. She asked the tenant to remove these things from the site. Earlier, in February 2021, she also asked the tenant to remove his motor home from in front of site 10 as it was slated for demolition. In any event, there were stoves and appliances inside the manufactured home that needed to be removed but were not. According to the landlord the cost to remove a kitchen fridge, two stoves, a washer and dryer, and a two-piece China cabinet cost $3,500.00. The wood stove had a replacement value of $1,400.00.

The landlord testified that, in the tenant’s submissions, the previous owner had given them to him. However, the landlord noted that there is no indication that they were his property. It was assumed that they belonged to the park.

L.S., witness for the landlord, testified that she and the landlord have been friends for about thirty-three years. She testified that she was present when the landlord asked the tenant to remove his belongings. There was also testimony about a campfire on the property, “under the trees.” She felt uncomfortable and left, and the landlord was being “cornered.” The landlord was calm when asking the tenant to remove the belongings.

The witness further testified that the landlord had asked the tenant to remove the property because she was in the process of selling the park. The tenant admitted that this was “his stuff.”

In respect of the landlord’s claim for loss of revenue the landlord testified that she accepted the offer but did not counter because of the “current situation” in the park. The initial offer was reduced by $30,000, and she “just about lost the sale.” The landlord agreed to the $30,000 reduction, or “deduction” as she called it. The reduction was all but necessary because of various “incidents and occasions,” purportedly the result of the tenant’s actions.

There were issues involving an excessive number of homes on the park and issues involving fires. (Permits were needed to have fires in the park.)

In order to reduce the number of “units” in the park the landlord had to demolish two of the homes. She was not in a position of removing any of the tenants, however. The purchaser was aware of these issues, the landlord added.

Responding to her counsel’s question about the tenant causing the loss, the landlord testified that the tenant spoke to a realtor and kept them appraised of the situation, and of the “goings on” in the park. This was both in relation to the campfires and the water leak. “I think this affected the sale and the amount of the sale,” the landlord stated. Further, the landlord testified that there was “no reason” why the tenant would need to get outside people involved in the sale.

Under cross-examination, the tenant asked the landlord, “isn’t it true that heavy machinery” was driving over the area where the sewer and water line was located? And “isn’t it probable” that the crack was caused by the heavy machinery? The landlord responded that there was a dumpster on site 10 but that it was nowhere near the tenant’s trailer, and that it had “no bearing” on the sewer.

The tenant testified that all of the issues started within four days of the landlord purchasing the park. The landlord attempted to raise the rent, which was illegal, but that he paid it anyway to. Yet he still received an eviction notice. The landlord is “trying to tar me with a terrible brush,” the tenant added. The landlord’s behavior had been going on for two years and is engaged in bullying him.

The tenant’s advocate argued that there is, in fact, a probability that it was the heavy machinery which damaged the lines, and that to assume it was the tenant who damaged the water and sewer is simply an assumption.

As for the “loss” of revenue, the tenant and his advocate submitted that the landlord purchased the park for $80,00 and then sold it for $230,000 ten months later: “she flipped it for [a] good coin.” At the end of the day, the advocate argued, the tenant had nothing to do with the landlord’s supposed loss of revenue. “The place was worth what it was worth,” the advocate submitted. Further, the purchaser would have been aware of the various issues in any event.

The landlord’s counsel then provided a closing submission which largely reiterated the various claims made during direct examination and in submissions made earlier in the hearing. The landlord submitted into evidence a 24-page evidence package and a 19-page evidence package containing various email correspondence and so forth.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

With respect to all claims and taking into careful consideration all of the oral and documentary evidence before me, I am unable to find that the landlord has proven, on a balance of probabilities, that the tenant breached the Act, the regulations, or any tenancy agreement (written or oral) from which compensation may flow.

Regarding the claim for unpaid rent, there is insufficient evidence for me to find that the tenant owes $2,984.45 in unpaid rent. That the tenant *may* have been using a manufactured home site other than his own does not lead me to find that he therefore owes rent. This aspect of the landlord's application must therefore be dismissed.

Regarding the claim for $3,500.00 for "removal of landlord's personal belongings," this claim—if it were proven—falls outside the jurisdiction of the Act or the regulation. Having reviewed sections 20 through 29 of the Act (sections which govern tenant and landlord rights and responsibilities during a tenancy) there is, I find, no section by which the landlord would have a legal claim against the tenant for his alleged actions of removing certain property. For this reason, I decline to make a finding on this claim. If there is a claim, it likely falls under the *Civil Resolution Tribunal Act,* SBC 2012, c. 25.

Regarding the claim for losses attributable to the tenant's alleged damage to the sewer lines, there is insufficient for me to conclude that it was, in fact, the tenant who caused the damage. Furthermore, it is equally plausible that the "heavy machinery" brought into the park caused the damage for which the landlord argues was tenant caused. Indeed, when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In the case before me, I find the landlord has failed to provide any evidence proving that the tenant breached section 26 of the Act. For this reason, this claim cannot succeed.

Last, regarding the claim that the tenant somehow caused the landlord to "lose" revenue in the amount of $5,380.00 on the sale of the park is wholly unsupported by the evidence. The landlord herself testified that she "thought" the tenant's actions of communicating with a realtor (who turns out to be his son) who in turn spoke to other realtors or realtor somehow affected the amount of the final sale price.

There is, quite frankly, no evidence, direct or circumstantial, to support the landlord's argument that the tenant had a hand in influencing and somehow impacting the final sale price. And what cannot be ignored is that it was the landlord who ultimately accepted a reduction in the sale price. The landlord could have rejected the offer or counter offered. She did not. That the landlord agreed to a final sale price that was $30,000 less than she had hoped to originally obtain does not mean that she suffered a loss. The "loss" was wholly of the landlord's choosing.

This is not to say that the tenant and his advocate (who is also is girlfriend) acted wholly appropriately around the time of the sale. The tenant seems to have taken it upon himself to contact the municipality and brings certain matters to their attention that ought to have been more appropriately brought to the landlord's attention. And the tenant's assertion that "everybody was afraid of [the landlord]" due to emails and "threats of eviction" is rather far-fetched. What is more likely than not is that the tenant and the landlord simply clashed as personalities; the tenant is a long-time resident of the park who did not appear to welcome the new landlord. However, I am not persuaded that the tenant had any impact on the final sale price for which the landlord claims as a loss.

In any event, for the reasons above, I dismiss the landlord's applications in their entirety without leave to reapply. Accordingly, the landlord's two claims to recover the cost of the application filing fees are similarly dismissed.

Conclusion

The landlord's applications are hereby dismissed, without leave to reapply.

This decision is made on delegated authority under section 9.1 of the Act.

Dated: October 6, 2022

Residential Tenancy Branch