



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAITHNESS MOBILE HOME
PAR and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNDCT, RR, RP, FFT**
 MNR-DR, FFL

Introduction

This hearing began on August 15, 2022 and was adjourned to this date for a teleconference hearing.

Only the tenant attended. The tenant was given an opportunity to present evidence, call witnesses and submit argument.

The landlord did not attend the hearing. I kept the hearing open for 18 minutes to allow the landlord opportunity to call in. Only the tenant and I logged into the hearing. I confirmed that the Notice of Hearing provided the correct call-in numbers and participant codes.

Interim Decision

This hearing relates to an application by the tenant for various relief relating to alleged failure of the landlord to provide adequate, reliable water to their manufactured home park where the tenant rents a site.

At the August 15, 2022 hearing, the parties agreed the landlord would carry out an inspection of the park's water system and provide a report to the tenant. The Interim Decision of August 15, 2022 contained details of the scheduling of the inspection and provision of reports to the parties.

The Decision included the following agreed terms:

1. The landlord shall retain a qualified person (“the inspector”) to inspect the park’s water system to determine responsibility for several listed questions, including any necessary repairs, the report to be provided to the parties and the RTB by September 15, 2022.
2. The landlord withdrew the 10 Day Notice and their claim for an Order of Possession was dismissed without leave to reapply at the August 15, 2022 hearing.
3. The tenant acknowledged owing the landlord \$161.27 for unpaid rent representing a holdback for accommodation expenses for one night when the tenant was without water for three days.

The tenant testified she has not received the Inspection Report which the landlord was ordered to prepare.

Dismissal of the Landlord’s Claims

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing – *If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application with or without leave to reapply.*

As the landlord did not attend the hearing and no evidence was presented for the landlord, I order the landlord’s application dismissed without leave to reapply.

Tenant’s Claims

In view of the failure of the landlord to attend the hearing, the tenant requested the following:

1. A monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation (“Regulation”) or tenancy agreement pursuant to section 60 of the Act in the amount of \$161.27 and leave to reapply for an additional award.
2. An award for reimbursement of the filing fee in the amount of \$100.00 pursuant to section 65.

3. Dismissal with leave to reapply of the request for an order to reduce the rent for repairs, services or facilities agreed upon but not provided pursuant to section 58,
4. Dismissal with leave to reapply of the request for an order requiring the landlord to carry out repairs pursuant to section 26.

Further to the request of the tenant, claims # 3 and # 4 are dismissed with leave to reapply.

The hearing continued with respect to the claim for a Monetary Order for \$161.27 and reimbursement of the filing fee.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order in the amount of \$161.27 and an award of \$100.00 for reimbursement of the filing fee?

Background and Evidence

The tenant provided uncontradicted testimony and supporting documents as the landlord did not attend the hearing.

The tenant stated they rent a site from the landlord in their manufactured home park. The tenant submitted a copy of the agreement and testified the rental started October 11, 2018. They pay rental of \$220.00 due on the first of the month.

The landlord provides water to the park and specifically to the tenant's mobile home ("the unit").

The tenant claimed as follows. The landlord's water system is poorly and inadequately maintained. The system is in poor working condition. As a result, the system has malfunctioned causing multiple shutdowns in the past year (August 2021 to August 2022) from a few hours to 3 days. This has resulted in a loss of water supply to each of the mobile homes in the park including the unit.

In her written application, the tenant stated the landlord failed to provide water at various times and for different periods. On one occasion, there was no water supply for 3 days to the unit. The family found the lack of water unbearable. They spent a night in a hotel. The tenant incurred expenses for accommodation, travel, and potable water in the amount of \$161.27 and submitted a copy of the receipt. The tenant requested reimbursement in this amount.

The tenant resides with three children in the unit. The unexpected, prolonged and repeated shutdowns of water caused considerable discomfort and inconvenience for the tenant.

The tenant submitted a copy of a letter to the landlord dated March 29, 2022 in which the tenant set out the details and timeline for the lack of water and described the loss of quiet enjoyment and losses. The tenant expressed concern in the letter and in her testimony about the frequent water outages and suspicion that the water infrastructure is not being maintained.

The tenant incurred significant monetary losses and damages for which she seeks leave to reapply for an additional award.

Analysis

Four-part Test

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. Has the other party failed to comply with the Act, regulations, or the tenancy agreement?
2. If yes, did the loss or damage result from the non-compliance?
3. Has the claiming party proven the amount or value of their damage or loss?
4. Has the claiming party done whatever is reasonable to minimize the damage or loss?

Failure to prove one of the above points means the claim fails.

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

7 (1) 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.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

. . .

67 Without limiting the general authority in section 62 (3) [. . .] if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Standard of Proof

Rule 6.6 of the *Residential Tenancy Branch Rules of Procedures* state that 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.

It is up to the party to establish their claims on a balance of probabilities, that is, that the claims are more likely than not to be true.

In this case, it is up to the tenant to prove their claims.

Findings

I find the tenant has met the burden of proof with respect to all 4 parts of the 4-part test and is entitled to an award in the amount of \$161.27.

I find the landlord is required to provide water to the tenant's site. I find the landlord failed to do so for 3 days commencing March 25, 2022. I find the tenant took her family to a hotel and incurred expenses of accommodation as they could not stay in their home. I find this decision reasonable in the circumstances and find she should be compensated by the landlord.

I accept the tenant incurred this expense and accept her receipt as evidence.

I find the tenant did everything reasonable to mitigate the expense, including staying in their mobile home for the remainder of the period without water.

I have granted the tenant leave to reapply for an additional monetary award.

Accordingly, I grant the tenant an award of \$161.27 as requested.

As the tenant has been successful in this matter, I award the tenant reimbursement of the filing fee of \$100.00 for a total Monetary Order of \$261.27.

I direct that the tenant may deduct this amount from rent due to the landlord.

Conclusion

I grant a Monetary Order to the tenant in the amount of \$261.27. This Monetary Order must be served on the landlord. This Monetary Order may be filed and enforced in the Courts of the Province of British Columbia.

This decision 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: November 04, 2022

Residential Tenancy Branch