Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant: MNDCT, FFT
Landlord: MNRL, MNDCL, FFL

Introduction

This hearing originally convened on January 9, 2023 and was adjourned to May 9, 2023 pursuant to an Interim Decision dated January 9, 2023 (the "Interim Decision"). This decision should be read in conjunction with the Interim Decision. This hearing dealt with the tenant's application pursuant to the *Manufactured Home Park Tenancy Act* (the *Act*) for:

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 60; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 65.

This hearing also dealt with the landlord's application pursuant to the *Act* for:

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 60;
- a Monetary Order for unpaid rent, pursuant to section 60; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 65.

The tenant and landlord C.B. (the "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord testified that he is an agent for the landlord numbered company. Both parties were represented by counsel.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings.

Counsel for both parties confirmed their email addresses for service of this Decision.

Preliminary Issue- Service

Counsel for both parties confirmed receipt of the other's application for dispute resolution and evidence. I find that both parties were sufficiently served for the purposes of this *Act,* pursuant to section 64(2) of the *Act*, with the other's application for dispute resolution and evidence because counsel for each party confirmed receipt.

Background/Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

The landlord testified that at the start of the tenancy he allowed the tenant to park his fifth wheel trailer at the subject rental site. The landlord testified that during the tenancy, the tenant, without permission, brought in a modular home frame on wheels and using a variety of different types of wood including plywood, built an addition to the fifth wheel. The above testimony was not disputed by the tenant. The tenant described the addition as a modular home with a walkway connecting it to the fifth wheel. The tenant testified that he used the modular home / addition as his main living space and used the fifth wheel for its sink, fridge and shower.

The landlord entered into evidence a dark black and white photograph of the modular home / addition. It shows that the modular home / addition is a building with windows, and a door. Both parties agreed that it has a chimney and a wood burning stove inside.

The parties submitted four previous Residential Tenancy Branch decisions regarding disputes between the parties at the subject rental site. Counsel for the tenant presented them in the hearing. I provide a brief summary of those decisions below to provide the contextual background for these applications.

The tenant filed an application for dispute resolution for determination regarding an additional rent increase and cancellation of a one month notice to end tenancy for cause. The October 2, 2020 decision which resulted from this application:

- cancelled the one month notice to end tenancy for cause,
- found that the landlord improperly imposed of rent increase contrary to the *Act*,
- found that rent was $300.00 per month,
- ordered the landlord to pay $2,400 to the tenant (the amount the tenant overpaid rent due to the improper rent increase), and
- permitted the tenant to withhold the above sum from rent due to the landlord.

The tenant later filed another application for dispute resolution for an order for the landlord to comply with the *Act,* a monetary order for damage or compensation and a claim for “other relief”. The resulting decision dated March 21, 2022 (the “March Decision”) states:

- “The parties agree that the tenant has reduced their monthly rent in accordance with the Monetary Order awarded in the previous hearing. The parties also agree that after the Monetary Order was satisfied the tenant attempted to make rent payments in the amount of $300.00 each month, as per the decision, but the landlord has refused to accept all subsequent payments.”
- “Under the circumstances I find it appropriate to order that the landlord accept payments issued by the tenant towards rent under the tenancy agreement. I find that any further refusal on the part of the landlord to accept the rent payments may be construed to be a waiver of their right to the rent for that month and may not give rise to the basis for an issuance of a notice to end tenancy for non payment of rent.”
- “I further order that the landlord comply with section 23 of the *Act* prohibiting entry to a site that is subject to the tenancy agreement. I note that any future violations of the tenant's right to exclusive possession by the landlord may give rise to a monetary award in the tenant's favour and may form the basis for a referral to the Compliance and Enforcement Division of the Residential Tenancy Branch.”
- “I am satisfied that the landlord has damaged, removed or tampered with the tenant's possessions including locks, gates and vehicles on the property. While the landlord, at certain points in their testimony, disputes that they have caused damage, they also stated that they have accessed the property and have removed items and fixtures they believed were placed by the tenant. I find the testimony of the parties, supported in the photographs and video evidence to be sufficient to establish that the landlord has caused damage to the tenant's items in contravention of the Act. While the tenant did not provide receipts and invoices for the cost of the items they claim were damaged, they gave cogent testimony regarding their approximate cost and I am satisfied that the total amount of the damages incurred is $1,000.00 as claimed. Accordingly, I issue a monetary award in that amount in the tenant's favour.”
- In the present circumstance, based on the evidence of the parties and the testimony of the landlord I am satisfied that there has been frequent, ongoing and unreasonable disturbance of the tenant on the part of the landlord. I find that the landlord's interference with the tenant's right to quiet enjoyment through their hostile interactions, uninvited presence on the property, and interference with the tenant's possessions spans many months ….. Based on the foregoing I find that a monetary award in the amount of $1,650.00, a figure that is the equivalent of one half of the monthly rent of $300.00 for the 11-month period from May 2021 to the date of the hearing to be appropriate. I issue a monetary award in that amount in the tenant's favour.

The next application for dispute resolution filed by the tenant was for cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent dated March 7, 2022 (the "10 Day Notice"), an order for the landlord to comply with the *Act,* restriction of the landlord's right of entry and recover of the filing fee. Only the tenant's application to cancel the 10 Day Notice was heard, and the tenant's other claims were dismissed with leave to reapply. The hearing occurred on July 12, 2022 and a decision dated July 13, 2022 found that:

> Section 39 of the Act states that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. Section 39 also states that the 10 Day Notice must comply with section 45, as to form and content.
>
> The Landlord acknowledged that the Tenant had sent him rent cheques via registered mail, but the Landlord decided not to pick up these mailings on his lawyer's advice."
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> According to RTB Policy Guideline #12, "Service Provisions", it states.
>
> > Where a document is served by Registered Mail or Express Post, with signature option, the refusal of the party to accept or pick up the item, does not override the deeming provision. Where the Registered Mail or Express Post, with signature option, is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.
>
> Accordingly, I find that the Landlord's failure to pick up the Tenant's registered mailed rent cheques does not equate to the Tenant not having paid rent. Rather, it evidences the Landlord's failure to accept the rent from the Tenant who is trying to pay on time. I find this is not grounds for issuing a 10 Day Notice under the Act. Further, the Landlord said he has started cashing the Tenant's cheques, so it is not clear how the Tenant is not paying rent.
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> Based on the evidence before me overall on this matter, I find the Landlord has provided insufficient evidence to uphold the validity of the 10 Day Notice Therefore, I find the Tenant is successful in his Application for an Order to cancel the 10 Day Notice. Pursuant to sections 39 and 55 of the Act. I cancel this 10 Day Notice and find the tenancy continues until ended in accordance with the Act.

The landlord filed an application for dispute resolution seeking an emergency early end to this tenancy. The landlord did not attend the hearing for same that occurred on August 26, 2022. The landlord's application for dispute resolution was dismissed without leave to reapply.

Both parties agree that on or around September 2, 2022 the RCMP required the tenant to vacate the subject rental site. The tenant testified that he was provided with two days to remove his fifth wheel, modular trailer and other personal possessions. The landlord testified that the tenant was given five days to remove his belongings. No documentary evidence on the time provided for the tenant to move was entered into evidence by either party.

The landlord testified that the RCMP ended the tenancy following the tenant uttering death threats to the landlord and throwing live shells on the landlord's driveway. The tenant testified that he didn't do those things. The landlord testified that Crown Counsel asked him if he wanted to proceed with charges but he decided not to as he did not want to attend court. The landlord testified that the charges were stayed.

Both parties agree that the tenant removed the fifth wheel from the subject rental property shortly after the RCMP told him to but did not remove the modular home / addition. The tenant testified that on the short notice provided by the RCMP he was not able to hire a tow truck to move the modular home which he testified could not be pulled off site with his truck and required special equipment.

Tenant's Claim

The tenant's application for dispute resolution was filed on August 3, 2022, before the tenancy ended, and describes the tenant's monetary claim as follows:

> I want the Landlord penalized under the Act, in the amount of $150.00 per month each time the Landlord issues a new unlawful Notice to End Tenancy and each time the Landlord unlawfully acts contrary to the British Columbia Supreme Court Order of Justice B. Hardwick made March 7, 2022 [registry and civil file number redacted].

Counsel for the tenant entered into evidence the British Columbia Supreme Court Order dated March 7, 2022 (the "Order") which states:

> THIS COURT ORDERS that:
>
> 1. The respondents [the landlords] by themselves, their servants, agents or otherwise be restrained from:

a) Interfering with the petitioner's peaceful enjoyment of using [the subject rental pad] (the “Property”), of which he is a tenant; and
b) evicting the petitioner without due process pursuant to the *Manufactured Home Park Tenancy Act;*

until the tenancy ends or until further order of this court;

Counsel for the tenant submitted that contrary to the Order and section 22 of the *Act* the landlord attempted to end the tenancy without due process through four letters dated July 20, 2022, July 21, 2022, July 23, 2022, and August 19, 2022. Council submitted that the tenant is seeking $150.00 for the issuance of each letter.

The July 20, 2022 letter to the tenant was drafted by counsel for the landlord and states:

> This is notice that you are to remove the wood stove and the addition to your fifth wheel, ("the said items"), both were installed without permission, without permit, without WETT and constitute inspection, a serious fire hazard to the other occupants of the Property, and to the timber on it.
>
> Remove said items within 24 hours or you will be served with a notice to vacate the Property.

The July 21, 2022 letter is a handwritten note from the landlord to the tenant which states:

> NO Fires
>
> NO wood stove

July 23, 2022 letter to the tenant was drafted by counsel for the landlord, it states:

> On July 20, 2022 you were served with a notice to remove a wood stove, plus the addition to the fifth wheel, due to the lack of permission to install these items and the fire hazard caused by the unpermitted and uninspected wood stove.
>
> You have failed to rectify the situation you caused and are thereby served with this notice to vacate the Property within 30 days or face the demolition and

> removal of your addition and fifth wheel by the landlord. Remove every trace of your personal property and return Property to the state it was in when the tenancy commenced or it will be all taken to the dump, on or after August 25, 2022.

The August 19, 2022 letter from counsel for the landlord to counsel for the tenant states:

> [Landlord C.B.] acknowledges the [monetary order awarded to the tenant by the Residential Tenancy Branch in a previous hearing]. The [landlord] company is still owed $4500.00 for rent. [Landlord C.B.] proposes that if [the tenant] leaves the property, both debts be deemed to have cancelled each other out, plus [landlord C.B.] will urge the Crown to enter a stay of proceedings on the charges [the tenant] faces for uttering death threats to [landlord C.B.]. This way both parties can move on.

The tenant testified that he's never seen the August 19, 2022 letter before today.

Counsel for the landlord submitted that the above letters were served on the tenant because the tenant was having outdoor barrel fires and interior wood stove fires in the summer during a period of time when fires were not permitted due to extreme fire risk. Counsel submitted that the tenant put the landlord's property at risk of burning because the tenant could have started a forest fire. The landlord testified that the tenant left fires burning outside unattended and he had to attend at the property at put them out.

The tenant testified that the landlord never told him not to have fires and has no evidence that he had fires. The tenant testified that he spoke with the fire department and they told him there was no law against having fires.

Counsel for the tenant submitted that the landlord was not permitted to say that the tenant can't have fires and if they do they must vacate and then send another note saying "no fires no stoves". Counsel for the tenant submitted that the landlord's July 23, 2022 notice to end tenancy does not comply with the *Act* and is unenforceable as it does not say what section of the *Act* is being contravened. Counsel for the tenant submitted that the landlord has not provided photographic evidence of the tenant burning and has not proved that any rules were broken.

Counsel for the landlord submitted that the August 19, 2022 letter was a without prejudice settlement offer.

Landlord's Claim- Unpaid Rent

The landlord's application for dispute resolution seeks to recover $6,000.00 in unpaid rent at a rental rate of $300.00 per month.

The landlord testified that after receiving the March Decision, he started accepting rent from the tenant. The landlord testified that the tenant stopped paying rent in September of 2021 and did not make any payment from September 2021 to the end of the tenancy. No ledgers or other forms of accounting were entered into evidence. The landlord testified that he received some rent cheques but sometimes the tenant didn't give him a rent cheque.

Counsel for the landlord submitted that the landlord's claim for unpaid rent is from December 2021 to the date the tenant was kicked off the subject rental site. Counsel submitted that this was the timeframe the landlord was willing to collect rent but the tenant did not provide it.

The tenant testified that he mailed the landlord a cheque for every month. The tenant testified that he paid all his rent.

Landlord's Claim- Clean Up Costs

The landlord testified that the tenant did not remove the modular home / addition from the subject rental property and left garbage, wood scraps and broken tricycles and other materials at the subject rental property which he had to pay to dispose.

The landlord testified that he hired a company to remove said items and that the company has removed most of the items left at the subject rental site, including the modular home / addition but that not everything was cleaned up. The landlord entered into evidence an invoice dated January 5, 2023 in the amount of $6,000.00 which he testified is currently owing to said company. The invoice states that $2,000.00 was due on December 5, 2022, $2,000.00 was due on Jan 5, 2023 and an additional $5,000.00 was due on January 5, 2023.

The landlord testified that the modular home / addition was of little to no value and would not likely survive a move; however, it did have wheels and the tenant could have attempted to tow it away. The landlord is seeking $6,000.00, for the cost of removing the tenant's modular home / addition and other garbage removed.

Counsel for the tenant submitted that the landlord never obtained an order of possession or a writ of possession and did not have authority to remove the tenant's belongings or modular home / addition from the subject rental site. Counsel for the tenant submitted that the tenant's possessions could not just be disposed of and the landlord cannot seek compensation for his improper disposition of the tenant's property.

The tenant testified that in addition to the modular home / addition, he left behind tools, ebikes and motorized wheelchairs. The tenant testified that the two days provided by the RCMP to remove his belongings fell over the September long weekend and he was not able to get anyone to move his modular home / addition. The tenant testified that he did not return after the two days provided because he did not want to get arrested. The landlord testified that he would have reported the tenant to the police if he trespassed after the permitted five days the tenant was provided to retrieve his belongings.

The landlord testified that tow truck drivers work 24/7 and that had the tenant wanted to remove his modular home/ addition, he could have. The landlord testified that the tenant was friends with tow truck drivers and that instead of moving his belongings the tenant sat on the property drinking beer with the tow truck drivers after the RCMP ended the tenancy. The above testimony was disputed by the tenant.

The landlord testified that the tenant did not leave any tools at the subject rental property or any functioning bikes or wheel chairs, just the remains of such items which had been stripped for parts and were of no value.

The landlord testified that he does not know where the company he hired moved the tenant's belongings but that he could ask and see if any of the tenant's items were retrievable.

Analysis

Tenant's Claim

Section 67 of the *Act* allows me to award damages for breach of the *Act*, the tenancy agreement or the Regulation. I find that pursuant to section 67 of the *Act,* I do not have jurisdiction to award damages for breach of a Supreme Court Order because said Order is not part of the *Act,* tenancy agreement or Regulation. This analysis will therefore be based on loss of quiet enjoyment alone (section 22 of the *Act).*

Section 22 of the *Act* states:

> **22** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:
>
> (a)reasonable privacy;
>
> (b)freedom from unreasonable disturbance;
>
> (c)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]*;
>
> (d)use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Policy Guideline 6 states that a landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

The tenant testified that the landlord never told him not to have fires and that he spoke with the fire department and they told him there was no law against having fires. Based on the above testimony, I find it highly unlikely that the tenant would ask the fire department about fires if he were not having them. I find it more likely that not that the tenant had fires at the subject rental property.

Upon review of the July 20, 2022 and July 21, 2022 letters, I find they do not breach section 22 of the *Act* as they inform the tenant of a perceived problem identified by the landlord and state a potential action that may be taken by the landlord. I find that since the tenant was having fires at the subject rental property in the summer this is a reasonable and rational approach. I find that posting letters about perceived concerns is not a breach of section 22 of the *Act* and did not unreasonably disturb the tenant.

I find that the July 23, 2022 letter clearly seeks to evict the tenant without due process as it states:

> Remove every trace of your personal property and return Property to the state it was in when the tenancy commenced or it will be all taken to the dump, on or after August 25, 2022.

I find that the landlord had no authority to end the tenancy as set out above as no Residential Tenancy Branch Notice to End Tenancy was served on the tenant and the tenant was not afforded an opportunity to dispute said notice to end tenancy.

I find in seeking to unilaterally end the tenancy without serving a Residential Tenancy Branch Notice to End Tenancy and in threatening to throw the tenants home in the dump, the landlord unreasonably disturbed the tenant contrary to section 22(b) of the *Act.* I find that such a threat constitutes a substantial interference with the tenant's ordinary enjoyment of the property as it threatened to destroy the tenant's home without any legal authorization to do so. I award the tenant $150.00 for the issuance of the July 23, 2022 letter.

I find that the August 19, 2022 letter does not breach section 22 of the *Act* as it is clearly a settlement offer and the tenant was under no obligation to accept it. I find that a settelment offer does not constitute an unreasonable disturbance and that the offer was not a repeated disturbance. I also find that as the tenant did not see the August 19, 2022 letter before this hearing, he could not have suffered a loss of quiet enjoyment from it.

As the tenant was successful in a portion of his claim, I find that he is entitled to recover the $100.00 filing fee from the landlord, pursuant to section 65 of the *Act.*

Landlord's Claim- Unpaid Rent

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states 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.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails. The testimony of the parties in regard to the payment of rent is markedly different. The tenant testified that he provided the landlord with rent cheques via mail. The landlord testified that he the tenant did not pay rent from September 2021 (approximately 12 months) to the end of the tenancy. Counsel submitted that the tenant did not pay rent from December 2021 to the end of the tenancy (approximately 9 months) and the application for dispute resolution seeks to recover 20 months' rent ($6,000.00 / $300 = 20 months).

The landlord did not submit any documentary evidence to support their claim for 9, 12 or 20 month's rent. I find that the landlord's claim was inconsistent between the application

itself, the landlord and counsel for the landlord. I found the testimony of the tenant to be internally consistent and more reliable that that of the landlord and the submissions of counsel. I find that the landlord has not proved, on a balance of probabilities, that rent was not paid. I find that the landlord has not met the required burden of proof and so the claim for unpaid rent fails.

Landlord's Claim- Cost of Clean Up

Section 37(1)(d) of the *Act* states:

> **37** (1)A tenancy ends only if one or more of the following applies:
>
> (d)the tenant vacates the manufactured home site or abandons a manufactured home on the site;

Based on the testimony of both parties, I find that the tenant vacated the subject rental property in the first week of September 2022 at the behest of the RCMP. I find that pursuant to section 37(1) of the *Act,* the tenancy ended in the first week of September 2022.

Section 34(1)(a) of the *Act* Regulation (the "Regulation") states:

> **34** (1)A landlord may consider that a tenant has abandoned personal property if
>
> (a)the tenant leaves the personal property on a manufactured home site that the tenant has vacated after the tenancy agreement has ended

Pursuant to section 34(1)(a) of the Regulation, I find that the landlord was permitted to consider that the tenant abandoned his personal property because the tenant left the person property on the manufactured home site after the tenant vacated and the tenancy agreement ended.

Section 34(3) of the Regulation states:

> (3)If personal property is abandoned as described in subsections (1) and (2), the landlord may remove the personal property from the manufactured home site, and on removal must deal with it in accordance with this Part.

Section 35(1) of the Regulation states:

> **35** (1)The landlord must

(a)store the tenant's personal property in a safe place and manner for a period of not less than 60 days following the date of removal,

(b)keep a written inventory of the property,

(c)keep particulars of the disposition of the property for 2 years following the date of disposition, and

(d)advise a tenant or a tenant's representative who requests the information either that the property is stored or that it has been disposed of.

(2)Despite paragraph (1) (a), the landlord may dispose of the property in a commercially reasonable manner if the landlord reasonably believes that

(a)the property has a total market value of less than $500,

(b)the cost of removing, storing and selling the property would be more than the proceeds of its sale, or

(c)the storage of the property would be unsanitary or unsafe.

(3)A court may, on application, determine the value of the property for the purposes of subsection (2).

The landlord did not enter into evidence a written inventory of the property and did not testify that such written accounts were made. I find, on a balance of probabilities that the landlord did not comply with the requirements set out in section 35(1)(b) and section 35(1)(c) of the Regulation.

Pursuant to section 35(3) of the Regulation, the landlord was at liberty to apply to a court to determine the value of the property for the purpose of section 35(2) of the *Act* but did not do so. Thus, in this dispute, the landlord must prove, on a balance of probabilities, that it was reasonable for him to believe that the tenant's property had a total value of less than $500.00, would cost more that the proceeds of its sale to remove and store or the storage of the property would be unsanitary or unsafe.

I find that the landlord has not proved on a balance of probabilities that the landlord reasonably believed that the value of the tenant's property had a total market value of less than $500.00 as the modular home / addition contained building materials that could reasonably be valued at over $500.00 including:

- wood burning stove,
- modular home frame,
- door,
- windows, and
- wood.

I find that the landlord has not proved, on a balance of probabilities that that the cost of removing, storing and selling the property would be more that the proceeds of its sale or that it would be unsafe or unsanitary to store the tenant's property as no evidence on these points were provided in the hearing.

As I have determined that the landlord has not proved that the landlord had the right to dispose of the tenant's property under section 35(2) of the Regulation, I find that the landlord has not proved that the tenant is responsible for the cost of disposing of the property. I therefore dismiss, without leave to reapply, the landlord's application for the recovery of the clean up costs.

As the landlord was not successful in his application for dispute resolution, I find that the landlord is not entitled to recover the $100.00 filing fee from the tenant, pursuant to section 65 of the *Act.*

Conclusion

I issue a Monetary Order to the tenant in the amount of $250.00.

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 Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlord's application for dispute resolution is dismissed without leave to reapply.

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: May 10, 2023

Residential Tenancy Branch