Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT CNC MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant for more time to file his application, to cancel a notice to end tenancy for cause and to obtain monetary compensation for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has a valid 1 Month Notice to End Tenancy for Cause been issued and served upon the Tenant in accordance with sections 40 and 45 of the *Manufactured Home Park Tenancy Act (the Act)?*
2. Has the Tenant proven the Landlord has breached the Act, regulation, or tenancy agreement?

Background and Evidence

At the outset of the hearing the Agent affirmed that the Tenant was advised that at the time the 1 Month Notice was issued it would be withdrawn if the old oil tank was removed, in compliance with their previous dispute resolution hearing. The old tank has since been removed and the Landlord wishes to withdraw the 1 Month Notice.

The Agent confirmed a 12 Month Notice had been issued November 30, 2011. The parties confirmed this hearing did not pertain to the 12 Month Notice even though the Tenant provided a copy of it in his evidence.

The Tenant affirmed that he is seeking compensation because he was without heat during the removal and installation of the oil tank and because the Landlord issued the Notice in bad faith because they knew the Ministry of Social Development was dealing directly with the oil tank service provider.

The Tenant clarified that the Landlord had been given permission to deal directly with the Ministry and therefore they should have known the Ministry was in the process of having the tank replaced and should not have caused him the stress in having to deal with this 1 Month Notice. The Tenant stated that he has had to deal with the Landlord's hostile behaviour since they purchased the property and he should be compensated for the increased medical issues and stress in dealing with having to move based on the 12 Month Notice and now having to deal with this 1 Month Notice.

The Agent contends that they are not in breach of the Act, regulation, or tenancy agreement and that they were within their right to issue the Notice. The Agent argued that the Tenant did not inform them that he was without heat so there was no way they could assist him with this matter as they were not aware of the issue.

The parties confirmed that they had a verbal tenancy agreement between the applicant Tenant and the Respondent Landlord since the Landlord had purchased this property.

The Agent noted that although the Tenant signed a release of information with the Ministry it only allowed the Landlord to access the information and the Landlord has been out of town.

The Agent and their Legal Counsel questioned the Tenant on how he determined entitlement to $15,000.00 when the old tank was removed March 9, he filed the application for dispute resolution March 13th and the new tank was installed March 15, 2012. The Tenant alleged that the entire project was put at risk because the Ministry requested that the Landlord not issue the eviction Notice as it may have stalled their agreement to fund the oil tank replacement.

In closing Counsel for the Landlord noted the following: the Landlord has not breached the Act, regulation, or tenancy agreement and in fact it was the Tenant who did not comply by having the oil tank removed within a reasonable amount of time; the Tenant has not proven that he has suffered a loss or that anyone could have foreseen a loss; and there is no proof that the Tenant has suffered an infraction of a legal right.

The Tenant noted that he feels the Landlord acted in bad faith; he does not believe the Landlord had cause because the negotiations were outside of his control and were with

the Ministry and the oil tank service provider; the Landlord ought to have contacted the Ministry to verify the status of the work; and he is having his doctor prepare materials at this time to prove this has caused him stress and increased medical concerns.

Analysis

I have carefully considered the aforementioned and all of the documentary evidence which included, among other things, copies of: 12 Month Notice, 1 Month Notice, Tenant's written statement, statement from the oil tank replacement company, a letter from the oil tank replacement company, consent to disclosure of information, Dispute Resolution Decision dated December 21, 2011, and chronological descript of events.

The 1 Month Notice to end tenancy issued February 29, 2012, has been withdrawn.

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

As per the aforementioned and on a balance of probabilities I find as follows:

This tenancy is a verbal contract between the applicant Tenant and the respondent Landlord. The Ministry of Social Development Income Assistance (the Ministry) is not a party to this tenancy and therefore the Landlord has no obligation to deal directly with the Ministry. I find the Landlord's actions of assisting the Tenant by communicating directly with the Ministry to be commendable.

There is no evidence before me to prove the Landlord breached the Act, regulation or tenancy agreement. Furthermore, there is insufficient evidence to prove the Tenant actually suffered ill health as a result of him complying with health and safety requirements and having this project completed. It is the Tenant's responsibility to ensure his manufactured home and heat source meet all health and safety standards required by law. Therefore, I do not accept the Tenant's argument that the Landlord

would be required to compensate him for loss of heat or for any medical concerns as a result of this project, even if there was evidence to support such as loss.

The evidence indicates the Tenant did not inform the Landlord or his Agent that he would be without heat during this project nor was there evidence to support the Tenant sought assistance from the Landlord. Therefore there is insufficient evidence to support the Tenant took any steps to mitigate the situation.

Based on the above I find the Tenant has not met the burden of proof for damage or loss, as listed above and I hereby dismiss his claim, without leave to reapply.

Conclusion

No findings of fact or law have been made pertaining to the 12 Month Notice to End Tenancy issued November 30, 2011.

The 1 Month Notice to End Tenancy issued February 29, 2012, has been withdrawn and is of no force or effect.

The Tenant's application for Monetary Compensation has been 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: April 04, 2012.

Residential Tenancy Branch