Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNDC FF

Preliminary Issues

The parties acknowledged receipt of the application, hearing documents, and evidence submitted by the other. I confirmed the Residential Tenancy Branch received the Landlord's evidence and informed the Tenant that the Residential Tenancy Branch had received three faxed pages of his evidence which included a cover sheet that indicated there were 30 pages being faxed. The Advocate stated the evidence was sent by their local Service BC Office and that they received a confirmation sheet which indicated all 30 pages had been sent okay.

The initial hearing had been scheduled for sixty minutes and with the volumes of evidence to be presented I informed the parties we would begin the hearing and would reconvene to a future date to complete the submissions. I granted the Tenant leave to resubmit his original 30 pages of evidence as there was a known problem with the *Residential Tenancy Branch's (RTB)* fax machine during the time that he had submitted his evidence. The Tenant was instructed to provide the RTB with the original 30 pages of evidence and both parties were instructed that no new evidence could be submitted prior to the May 30, 2012 reconvened hearing.

Introduction

This hearing was convened on April 12, 2012 for the initial ninety five minute session and reconvened for the current eighty minute session of May 30, 2012.

The hearing dealt with an Application for Dispute Resolution by the Landlord for a Monetary Order for damage to the unit, site or property, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearings and provided affirmed testimony. Each party was given the opportunity to provide their evidence orally, respond to each other's testimony, cross exam each other, 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 the Landlord met the burden of proof to obtain a Monetary Order pursuant to sections 7 and 67 of the *Residential Tenancy Act*?

Background and Evidence

The Landlord submitted proof of purchase documents from 1998 and a 2003 property tax assessment to establish the value of a 1974 manufactured home which she arranged to be demolished in 2010. She asserted the home had to be demolished as the result of the Tenant's negligence and his failure to comply with the Act. She also asserted that the value of her loss exceeds the $25,000.00 limit however she is only seeking recovery of the maximum allowable amount as dictated by the legislation. Her claim is comprised of $16,000.00 for the value of the manufactured home plus $9,000.00 for the cost incurred to have the home demolished in March 2010.

The Landlord stated that she had previous knowledge that the Tenant had been evicted twice in 1998/1999 and that he was suffering from physical and mental health issues so she purchased a manufactured home to prevent him from becoming homeless. She entered into a verbal residential tenancy agreement with the Tenant which began in 1999.

The Landlord affirmed that during the course of the eleven year tenancy she received numerous phone calls, almost every second week, from the manufactured home park managers complaining about the Tenant's actions. She said she protected the Tenant and would smooth over the issues with the park managers. She mentioned how she defended the Tenant during a dispute in 2004 during which she was faced with choices to have the Tenant evicted or not. She said she responded to the park managers by saying "please don't do that".

The Landlord spoke about her insurance coverage and pointed to a letter provided at tab 20 of her evidence. This letter was issued to her from her insurance company on November 24, 2009 and outlined the terms of her renewal coverage. The Landlord turned to her evidence at tab 24 which is a letter issued from her insurance company dated February 18, 2010 which states her insurer "n*o longer wishes to remain on risk for the mobile due to the age and lack up updating".* The letter further states that the insurer "*is willing to look at the application if the home passes an inspection".* She

commissioned an inspection which took place on March 4, 2010 during which the inspector determined nothing could be salvaged from the trailer.

The Landlord stated that as of March 10, 2010 the manufactured home was no longer insured so she went to a bailiff in a nearby town. She said she was not looking for money and she did not want to be responsible for the manufactured home anymore so she opened up the yellow pages and found a demolition company. She stated she decided to have the manufactured home demolished because the inspector determined that it could not be salvaged.

The Landlord submitted that the Tenant had left town for an extended vacation prior to the inspection and was not around to hear the verdict. She said she did not want to have to wait around for six months for the Tenant to return so she had a discussion with the park managers and they told her that she was the person responsible for the home so she decided to have it removed and demolished.

The Landlord spoke about her photographic evidence and noted that the photos were taken on March 2, 2010 and March 3, 2010. She argued that there was mold throughout the home caused in part by damp bales of hay that were inside the home, holes in the roof caused by the Tenant, electrical wires hanging from the ceiling, kitchen cabinets were removed, faucets were removed, and the natural gas was disconnected. She acknowledged that the Tenant had told her that he had removed some items from the home because of his health issues; however he never asked permission to do all that to the trailer.

The Tenant affirmed that his written submission accurately reflects his response to the Landlord's claim and that he has read and initialled each page of the typed statement. He argued that he had informed the Landlord of all required repairs and modifications needed, usually by telephone, computer messages, or when the Landlord would come to pick him up to get groceries. He stated the Landlord visited the trailer on a regular basis and that she knew about the old carpet that was in the fifty year old trailer. He said he recalls telling the Landlord four or five years into his eleven year tenancy that he had to remove the old carpet and she approved.

The Tenant said there were many occasions where he told the Landlord of his concerns about the foundation and the trailer shifting. He referenced his exhibit #11 which is an e-mail he composed to send to the park owners in May of 2009 which speaks to the sloping and erosion around his manufactured home. He noted that he informed the Landlord about the home shifting and the front door not being able to close properly. He said the Landlord never acted so he attempted to adjust the home. As the home

continued to shift it negatively affected the plumbing and drainage which resulted in the need to remove the kitchen sink and drain. The Tenant denies putting holes in the roof and argued they were the result of water damage and rot. He advised the back window had to be replaced due to the rotten frame. He stated he kept the Landlord informed of his chemical sensitivities and that the only thing the Landlord ever arranged to be repaired was the toilet and the addition of some insulation which was blown in through the ceiling.

The Tenant pointed out that during his tenancy the Landlord never formally inspected the inside of the manufactured home. He said she visited occasionally near the beginning but declined to come inside after about five or six years saying she should not be seen being inside the trailer.

The Tenant asserted that the Landlord knew of all the work that was performed in and around the home which was done with her permission, as supported by his evidence which included a copy of a note written and signed by the Landlord in July 2006, and states:

"Please-No more plastic outside (and junk of all kinds) (No more TURPS – sommer or winter) Use your creativity for the inside of your home. (otherwise you could lose it)" [sic].

The Landlord confirmed she wrote this note and left it for the Tenant. She said the Tenant had been straight forward with her near the beginning until about 2008. She confirmed the Tenant had told her about having plumbing issues and she confirmed that she brought the Tenant two bales of straw which she was told would be used for the wine plants.

The Tenant asserts that the Landlord ought to have known her responsibilities as a landlord as the Landlord confirmed she had managed another property. The Landlord refuted this statement by saying she was not a property manager she was just looking after a place for a friend.

The Tenant argued that he was never issued an eviction notice and that he was informed in January or February 2010 that the Landlord required an inspection because her insurance was being cancelled. He said she told him that no one could live in the home if it could not be insured and next thing he found out she had his home demolished.

During the cross examination the Tenant submitted that the Landlord's application has been supported by the same evidence she used in response to his application and that she filed this claim simply because she did not like the outcome of the Tenant's application.

The Landlord acknowledged that she attended the rental unit every week but that she stayed inside her car. She said she realized a few years after the start of the tenancy that she had two choices: (1) evict the Tenant, which she did not want to do, or (2) wait and hope. She said she chose to wait and hope. The Landlord confirmed she did not like the decision that was issued for the Tenant's application.

The Tenant denied causing damage to the roof of the home and argued consistently that the Landlord had knowledge of: his attempts to keep the home warm with plastic and cardboard; his concerns about the home shifting and twisting; his choice to use electric heaters; he did not disconnect the gas line he simply stopped using the gas heat; and she knew about the plumbing issues. He confirmed the presence of mold and rodent feces.

The Tenant stated he found the inspectors report to be completed in haste and he questioned how they could assert that home was uninhabitable or that nothing was salvageable as he was surviving and did not die from living there.

In closing the Landlord noted that her claim clearly outlined the specific costs being claimed; the home had to be demolished due to the Tenants conduct which caused extensive damage; the Tenant breached his responsibility set forth in the Act; the Tenant did not inform the Landlord of work being performed; and the Tenant's evidence of power consumption does not prove the home could be inhabited.

The Tenant asserts the Landlord failed to mitigate; she had a history with the Tenant and knew of his condition; she had knowledge of the work and gave consent as supported by the Landlord's evidence at tab # 31 and # 25; the Landlord was aware of the situation as early as two years into the tenancy; she was informed of the structural concerns; the inspection report does not speak to blame, cause or structural issues; and the Landlord said she would wait and hope which is not mitigation and is not taking action.

Analysis

I have carefully considered the aforementioned and the documentary evidence which I found relevant to my decision.

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*.

Section 7 (2) of the Act stipulates a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the Act, the regulations or their tenancy agreement, must do whatever is reasonable to minimize the damage or loss. This is more commonly known in the law as the duty to mitigate.

The *Residential Tenancy Policy Guideline # 5* explains mitigation to be a duty of the victim of a breach who must take reasonable steps to keep the loss as low as reasonably possible. An applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.

In determining if the Landlord did whatever was reasonable to minimize her loss I turned to the following as provided in evidence:

- The Landlord had prior knowledge of the Tenant's physical and mental health issues; and
- The Landlord made a conscious choice to purchase a manufactured home to house the Tenant so he would not become homeless; and
- The Landlord was alerted to concerns about the Tenant's actions from the manufactured home park managers "almost every second week", during this eleven year tenancy; and
- The Landlord chose to smooth over the park managers' concerns; and
- The Landlord was faced with having to evict the Tenant during a 2004 dispute and chose not to; and
- In July 2006, the Landlord wrote a note to the Tenant which states: *"Please-No more plastic outside (and junk of all kinds) (No more TURPS – sommer or winter)* ***Use your creativity for the inside of your home****. (otherwise you could lose it)"* [sic] [My emphasis added]; and
- The Landlord visited the manufactured home on a weekly basis and refused to go inside; and
- The Landlord never formally inspected the inside of the manufactured home; and
- Only a few years into the tenancy the Landlord realized she had two choices: (1) evict the Tenant, which she did not want to do, or (2) wait and hope. The Landlord chose to wait and hope.

Based on the aforementioned I find the Landlord made a conscious choice to enable the Tenant to live as he saw fit, despite the effect his actions had on the inside of the manufactured home, while she ran interference from opposing parties and sat quietly on the sidelines to “wait and hope”. The evidence proves the Landlord had ample opportunities and notice of the need to take action to mitigate the extent of her loss; however she continued to consciously avoid or “smooth over” the issues for over eleven years. The evidence further supports the Landlord would have continued to allow this situation to continue had her property insurance agreed continue to insure the trailer or would have considered insuring the Tenant as noted in her e-mail of February 19, 2010.

In this case it would have been reasonable for the Landlord to seek a remedy through the dispute resolution process when she was first alerted to the Tenant’s actions by the park managers or when she first observed this situation early on in the tenancy. Accordingly, I find the Landlord’s loss could reasonably have been avoided, had she not chosen to avoid the situation while she waited and hoped. Therefore, I find there is insufficient evidence to prove the Landlord mitigated her loss, as required under section 7 of the Act, and is not entitled to compensation.

The Landlord has not been successful with her application; therefore she must bear the cost of making this application.

Conclusion

I HEREBY DISMISS the Landlord’s application.

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: May 31, 2012.

Residential Tenancy Branch