



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND MNR MNDC FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the *Manufactured Home Park Tenancy Act* (the "Act"). The landlord applied for a monetary order for damage to the unit, site or property, for unpaid rent or utilities, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the filing fee.

The tenant, an advocate for the tenant, the landlord, and a witness for the landlord attended the teleconference hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

On November 14, 2013, the hearing was adjourned so the landlord could re-serve the landlord's original evidence, which the landlord did; and so the tenant could re-serve the tenant's three pages of the evidence, which the tenant did. The hearing re-convened on January 16, 2014, and the parties confirmed that they received evidence from the other party and that they had the opportunity to review that evidence prior to the hearing. As a result, I find the parties were sufficiently served under the Act.

I have reviewed all evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matter

As part of her application, the landlord has requested an order for the tenant to remove the address of the owner from a “Registry”. As that portion of the landlord’s request does not fall under my jurisdiction, I am unable to consider that portion of the landlord’s application, due to lack of jurisdiction.

Issue to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?

Background and Evidence

The parties agreed that a tenancy began on September 1, 1998. The landlord has claimed \$4,925.32 comprised of the following:

Item 1. Estimate for landscaping, damages repaired, and debris removal	\$3,873.81
Item 2. Overholding (site rent)	\$520.00
Item 3. Fencing repair – emergency fencing	\$531.51
TOTAL	\$4,925.32

The landlord is seeking \$531.51 for “emergency fencing”. The landlord testified that a portion of fencing had to be removed for the manufactured home to be removed from the rental site. The landlord confirmed that she did not have anything in writing from the tenant that required that the portion of fencing had to be replaced after the rental site was vacated. The parties agreed that the manufactured home was removed from the same location where it was installed at the start of the tenancy in 1998, and that the fencing was installed at some point in 2004. The landlord referred to section 26 of the *Act*, which the landlord states requires the tenant to repair damage caused by the tenant.

The landlord is seeking full September 2011 rent of \$520.00, alleging the tenant was overholding the rental unit beyond the end of tenancy date, which was August 31, 2011. The tenant confirmed that the rental site was not vacated until September 13, 2011, while the landlord testified that the tenant left debris on the rental site and was alleging that the tenant has not fully vacated the rental site as a result.

The advocate for the tenant referred to document “E” in the landlord’s evidence which is a letter dated September 13, 2011, from the landlord to the tenant, and is signed by the landlord and the two contractors, and reads, in part:

“...This is to inform you that the contractors [name of contractor “MS”] and [name of contractor “RB”] have completed removing the debris from around the mobile and the demoed shed behind your mobile. They should be paid in full \$2,500.xx as I am completely satisfied with all their hard work.”

[reproduced as written]

The advocate for the tenant stated that the September 13, 2011 letter from the landlord absolves the tenant from the landlord’s claim for landscaping, damages, debris removal and fencing repairs, as the landlord confirmed in writing that she was “completely satisfied” regarding the removal of the manufactured home from the rental site, and the debris from around the manufactured home, and the demolition of the shed. The parties agreed that the tenant did pay the \$2,500.00 as described in the letter reproduced above.

The landlord disputed some of the testimony of the advocate and the tenant. The landlord stated that her September 13, 2011 letter to the tenant was only in reference to the removal of the manufactured home and stated “I was very clear this did not include other damages.”

The landlord referred to evidence “C” in the landlord’s evidence package, which is an estimate of work including delivery of materials and supplies, to grade soil, to over seed lawn areas, to fertilize lawns, to remove and dispose of debris, for equipment, and other related fees, for a total of \$3,873.81. The estimate is dated April 9, 2012, and the landlord confirmed that the work has not been started to date. The landlord claims that the damage to the rental site occurred between July and September of 2011. The landlord referred to photos submitted in evidence, which were not dated. The tenant disputed the damages and costs being claimed for damages and the fencing, in their entirety.

The landlord called witness, “JG”. Witness JG was asked if he was present when the damage on the rental site occurred, to which witness JG responded, “I don’t know when the damage occurred but I first witnessed it in September 2011.” Witness JG stated that the damage has actually gotten worse over time and was last there about three weeks before the date of the reconvened hearing, January 16, 2014. Witness JG confirmed that he is a cousin of the landlord under cross-examination, and that the purpose of his visits to the rental site where of a social nature.

The landlord referred to evidence 6, page 2, a letter from “DD”. The advocate for the tenant stated he was confused by the letter as the letter reads in part that the landlord “had also indicated that [the tenant’s name] had caused significant damage to her property” and by writing that, the advocate questioned whether “DD” personally witnessed damage or was merely describing what the landlord was describing to “DD”.

In the landlord’s evidence, the landlord admits to owing the tenant \$5,300.00 in relation to a previous dispute resolution hearing, and was requesting that any monetary claim awarded to the landlord be offset against the amount owing by the landlord to the tenant related to a monetary order issued to the tenant in 2011. The landlord filed her application on August 14, 2013, which is approximately two weeks before the statutory deadline to submit a claim for damages and loss of rent under the *Act*.

Analysis

Based on the documentary evidence, testimony and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlord did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

There is no dispute that the manufactured home was not removed from the rental site before September 13, 2011. There is a dispute regarding debris left behind by the tenant at the end of the tenancy. **I find** that the letter written by the landlord to the tenant dated September 13, 2011, supports that the rental site was completely vacated by the tenant and that the tenant had the right to rely on that letter. The landlord confirmed that she has not had any of the alleged damage repaired, and waited until April of 2012 to obtain an estimate of work allegedly damaged between July and September of 2011. As a result, **I find** the landlord has provided insufficient evidence to prove that she has suffered a loss.

I afford little weight to testimony of the landlord's witness, JG, as the witness was related to the landlord, confirmed he attends the rental site for "social" purposes, and admitted that he did not know the date the damage occurred. Furthermore, the landlord did not have any photos of the condition of the rental site at the start of the tenancy, and the photos submitted in evidence were not dated and were disputed by the tenant. I afford little weight to the document from "DD" submitted by the landlord, as I find the letter to be confusing as it was not clear in that letter if "DD" was merely describing what the landlord had advised her off, versus what she personally witnessed.

In addition, **I find** that the landlord submitted contradictory evidence as the letter from the landlord dated September 13, 2011, confirms that the tenant had completed removing debris from around the manufactured home and the shed and that the landlord is "completely satisfied" with all the hard work of the contractors. Although the landlord testified that she was "very clear this did not include other damages", when she described the letter she wrote to the tenant dated September 13, 2011, I find the landlord failed to provide supporting evidence to support her testimony.

The landlord is claiming for "emergency fencing" costs, claiming that the tenant removed fencing in 2011 when the manufactured home (the "home") was removed from the rental site, the fencing of which was installed by the landlord in 2004, six years after the tenancy began in 1998, when the home was moved onto the rental site. The landlord confirmed that she did not have a written agreement with the tenant requiring the tenant to replace the fencing removed to allow for the home to be removed from the rental site.

Based on the above, **I find** that the landlord has failed to meet the four-part test for damages or loss, as described above. **I dismiss** the landlord's claims for damages

related to items #1 and #3 described above in full, due to insufficient evidence and contradictory evidence, **without leave to reapply. I find** that it is not reasonable for the landlord to have written a letter dated September 13, 2011, indicating that she was completely satisfied with the removal of the debris around the manufactured home including the shed, and then almost two years later, claim over \$4,000.00 for alleged damage that has not been fixed in over two years. Further, **I find** that it is not reasonable for the landlord to erect fencing six years after the tenancy began in 1998, and expect the tenant to replace that fencing after the home is removed from the rental site, as the fencing did not exist at the start of the tenancy.

Regarding item #2, **I find** that the tenant is responsible for overholding for the dates of September 1, 2011 to September 13, 2011, which is a total of 13 days. Monthly rent was \$520.00 per month, which results in a daily rent amount of \$17.33. The daily rent amount was calculated by taking the monthly site rent of \$520.00 and dividing by 30 days in the month of September 2011. Therefore, **I find** the landlord is entitled to compensation for the tenant overholding the rental site in the amount of **\$225.29**, which is calculated using the \$17.33 daily rent amount described above, and multiplying that amount by 13 days.

As only a portion of the landlord's application had merit, **I grant** the landlord the recovery of half of her filing fee, in the amount of **\$25.00**.

I find that the landlord has established a total monetary claim of **\$250.29** comprised of \$225.29 for overholding of the rental site, plus \$25.00 if the filing fee. **I grant** the landlord a monetary order pursuant to section 67 of the *Act*, in the amount of **\$250.29**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The landlord's request to offset this monetary order against a monetary order granted to the tenant in 2011 is denied. It is the responsibility of the parties to serve and enforce their respective monetary orders.

Conclusion

Items 1 and 3 of the landlord's claim are dismissed, without leave to reapply.

I find that the landlord has established a total monetary claim of \$250.29 comprised of \$225.29 for overholding of the rental site, plus \$25.00 if the filing fee. I grant the landlord a monetary order pursuant to section 67 of the *Act*, in the amount of \$250.29. This order must be served on the tenant and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: February 7, 2014

Residential Tenancy Branch

