Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC

Introduction

This hearing dealt with an application by the tenant to cancel a notice to end tenancy for unpaid rent and for a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement.

Both the landlords and tenant attended the teleconference hearing and gave affirmed evidence. The landlords were also represented by an articled student.

The tenant's Application for Dispute Resolution did not indicate that she was seeking a monetary order, however much of the evidence she provided to the RTB and to the landlords was related to that issue. The landlords provided evidence in response which also appeared related to a monetary claim. At the hearing, the landlords agreed they knew the tenant was seeking a monetary order. I conclude that I may deal with the monetary claim, despite it not being indicated on the tenant's Application for Dispute Resolution.

Issue(s) to be Decided

Should the notice to end tenancy for unpaid rent be cancelled?
Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement?

Background and Evidence

The parties agree they have a tenancy agreement whereby the tenant is obligated to pay $255.00 rent per month in advance on the first day of the month for a pad for her manufactured home.

The landlords gave evidence that they served the tenant with a Notice to End Tenancy for Unpaid Rent (the "Notice") by putting it through the tenant's door on January 17, 2014. Section 83 of the Act specifies that a notice served in this way is deemed to have been received by the tenant three days later, on January 20, 2014. The tenant's evidence is that she found the Notice around January 22, 2014. The Notice states the tenant failed to pay rent of $510.00. The landlord's evidence is that the tenant had not paid rent for December 2013 or January 2014 at the time the Notice was served.

The tenant's evidence is that she has not paid any rent for December 2013 or January 2014. She said she sent the landlord rent payment for February 2014 by registered mail on January 30 or 31, 2014 and rent payment for March 2014 by registered mail on February 28, 2014. The landlords gave evidence that they have not yet deposited those payments.

The tenant says she had enough money to pay rent for December 2013 and January 2014 on December 20, 2013 however her vehicle was damaged that day and she needed the money to repair it.

The landlords request an order of possession. However, the landlords agree to an effective date of April 30, 2014 to give the tenant more time to arrange her move out.

The bulk of the tenant's monetary claim stems from damage her vehicle sustained on December 20, 2013. The tenant claims compensation from her landlords for the following:

Repair Order	235.18	Replace serpentine belt, repair power steering cooler line
Estimate	1,050.34	Lake City Collision estimate for body work
Towing cost	165.38	Bee Jay Auto Wrecking & Towing Inc
	1,450.90	

The tenant also claims $100.00 for a plumbing expense incurred in 2008, for a total monetary claim of $1,550.90.

The tenant claims that the landlords are responsible for the cost of her vehicle repairs because the landlords neglected to have the roads in the manufactured home park properly plowed. The tenant's evidence is that the landlords did not arrange to have the roads adequately plowed on December 20, 2013 and that resulted in damage to her vehicle.

An unsigned copy of the tenancy agreement put into evidence by the landlords lists "**Snow removal on main roadways**" under the heading "SERVICES, AMENITIES, & FACILITIES INCLUDED IN THE TOTAL RENT:"

The tenant gave evidence that she had new studded winter tires put on her van on November 30, 2013. She said it snowed on December 19, 2013 and a weather warning was issued. The snow continued on December 20, 2013. The tenant's evidence is that the road in the manufactured home park was plowed at 5 or 6 a.m. on December 20, 2013.

The tenant states she drove her van into town about 11:45 a.m. to do some errands. She does not remember how much snow was on the road at that point. She then drove home and packed her van to go on holiday. She said she normally backs into her driveway but on this occasion she drove forward into her driveway. Snow continued to fall during the day. At about 5 or 5:30 p.m., she backed out of her driveway onto the road that goes through the manufactured home park. She then attempted to go forward on the road, up a slight incline, but could not move forward because her tires were spinning. Her evidence is that her van was stuck across the road. She estimates there was about 4 or 5 inches of snow on the road at that point in time. She said that she and her neighbour shovelled snow away from the tires and the underside of the van. They did not have any salt or sand to put down.

The tenant's male neighbour arrived and attempted to drive the vehicle for her. She said the neighbour "cranked" her steering wheel and that caused the serpentine belt to come off. Her steering then did not work. She later discovered that the power steering fluid line had broken.

The neighbour then attempted to tow her vehicle, however the tow line became disconnected from her vehicle. They were able to get the van back into her driveway. The next day, she called a tow truck to tow her van in for repairs. The tow truck invoice was $165.38.

The tenant's evidence is that the van required work totalling $235.18 to be driveable. This work was to replace the serpentine belt and repair the power steering fluid line. The tenant also obtained an estimate from a body shop for repairs to the front end of the van. She said the van's front end was damaged when the neighbour's tow line became disconnected from the vehicle. The quote to repair this damage is $1,050.34.

The tenant's position is that the landlords are responsible for road maintenance in the manufactured home park, that the landlords failed to properly deal with the snow fall, and that her vehicle was damaged as a result of this failure.

The landlords' evidence is that the road in the manufactured home park was plowed at about 6 a.m. and again at about 6 p.m. on December 20, 2013. The landlord provided a copy of an invoice from the company who sands the manufactured home park roadways. The invoice indicates the roadways were sanded six times between November 20, 2013 and January 22, 2014. The roadways were sanded on December 6, 2013, two weeks prior to the tenant getting stuck, then again on December 21, 2013, the day after the tenant got stuck. The landlords gave evidence that they live in the park themselves so are able to assess when sanding is required.

The landlords also provided a copy of a survey of many of the residents of the manufactured home park that the landlord conducted on January 14, 2014 which asked residents to indicate whether they felt road maintenance in winter was good, fair, or bad. The survey indicates that 26 residents felt the winter road maintenance was "good", two residents felt it was "fair", and no residents indicated it was "bad".

The tenant gave evidence that she had spoken with the resident of site 14 who told her that her vehicle had also become stuck and she did not sign the survey but felt the winter road maintenance was not adequate. The tenant also provided a letter dated January 27, 2014 from the organization which provides "HandyDART" services; the letter indicates that HandyDART will not enter the manufactured home park until such time as the roads are plowed and sanded. The tenant's evidence is that the HandyDART bus became stuck on the park roadway about a year ago and now refuses service when there is ice and snow.

The landlords' position is that the tenant should have called a tow truck when her vehicle became stuck, and the damage to the tenant's vehicle was caused by the actions of the tenant and the tenant's neighbour who assisted her.

The tenant gave evidence that there was a plumbing problem in the common water line in 2008. She said she hired a plumber to repair the problem. She said the plumber was going to clear resulting sediment from the water lines in her manufactured home the same day, but he was called away on an emergency. He came back another day, cleared the sediment in her shutoffs, kitchen taps, and a toilet fill valve and sent her an invoice for that work. Her evidence is that the landlords paid the plumber's first bill for clearing the blockage in the common water line but did not pay the plumber's

subsequent bill for clearing sediment that resulted from the blockage. She claims a $100.00 loss for the subsequent plumber's bill.

The landlords' evidence is that the 2008 plumbing invoice was to clear sediment that originated in the tenant's water line, and there was no blockage in the common water line. The landlords' position is that the plumbing invoice is therefore the tenant's responsibility.

Analysis

I accept the tenant's evidence that she received the Notice on approximately January 22, 2014.

There are very limited circumstances in which a tenant may withhold rent that is due and payable to the landlord and these circumstances are set out in the *Manufactured Home Park Tenancy Act* (the "Act"). The tenant has indicated that she needed money to repair her vehicle. I find these circumstances do not meet any criteria set out in the Act that would allow the tenant to not pay rent. Section 27 of the Act sets out a process by which a tenant may be able to deduct the cost of emergency repairs from the tenant's rent; however Section 27 does not apply to repairs to a tenant's vehicle. Accordingly, there is no basis on which I can cancel the Notice.

The landlords have requested an Order of Possession and I find they are entitled to one. The landlords have agreed that the tenant may remain until 1 p.m. on April 30, 2014. I grant the landlord an order of possession, effective on April 30, 2014 at 1 p.m., which must be served on the tenants. Should the tenants fail to comply with the order, it may be filed for enforcement in the Supreme Court.

The tenant also seeks a monetary order. Section 60 of the Act permits me to make a monetary order where damage or loss results from a party not complying with the Act, Regulation, or tenancy agreement. In this case, the tenant argues that the landlords' failure to adequately clear snow from the roadway on December 20, 2013 resulted in damage to her vehicle.

The Act and Regulation make no specific reference to snow removal. The landlords' general obligations are set out in Section 26 of the Act which states:

> (1) A landlord must
>
> > (a) provide and maintain the manufactured home park in a reasonable state of repair, and

(b) comply with housing, health and safety standards required by law.

The tenancy agreement requires the landlord to remove snow on the main roadways, however there is no agreement as to how frequently snow must be removed and no agreement as to whether sand or salt must be applied. In the absence of these particulars, I find the tenancy agreement requires the landlord to take reasonable steps to remove snow on the main roadways.

In this case, the snowfall was particularly heavy on December 19 and 20, 2013 and there was a snowfall warning in effect. The landlords had snow removed from the roadways at about 6 a.m. and about 6 p.m. on December 20, 2013. The tenant attempted to move her vehicle at about 5:00 or 5:30 p.m. that day and became stuck.

I find that the landlords did not breach the Act or tenancy agreement. The landlords were required to take reasonable steps to remove snow and I find they did so. The landlords were not required to keep the roadways clear of snow at all times during a heavy snowfall. The landlords were not specifically required to sand the roadways. I am persuaded by the survey of other tenants that winter road maintenance was generally “good” in the manufactured home park. For those reasons, I do not find that the landlords’ failure to apply sand for the period from December 6 to December 21, 2013 to be a breach of the landlords’ responsibilities under the Act or tenancy agreement.

Since there was no breach of the Act, Regulation, or tenancy agreement, the tenant is not entitled to compensation for damage to her vehicle. I find that, even if the landlords had breached the Act or tenancy agreement by not removing snow adequately, there was an intervening cause of the damage to the tenant’s vehicle and that is the actions of the tenant’s neighbour in attempting to move the van. The landlords could have foreseen that a park tenant might need a tow truck if a tenant’s vehicle became stuck, however the landlords could not have reasonably foreseen the damage that occurred from “cranking” the steering wheel or from the tow line becoming detached from the vehicle. Therefore, even if there was a breach of the Act, Regulation, or tenancy agreement (and I find there was not), the landlords would be responsible only for the towing charge and not the damage to the vehicle.

The tenant also seeks a monetary order in relation to 2008 plumbing work to clear sediment from shutoffs, kitchen taps, and a toilet fill valve in her manufactured home. The tenant asserts that the sediment came from the common water pipe which is the responsibility of the landlords.

The landlord asserts that the sediment came from the tenant's section of water pipe, which is not the landlord's responsibility. Neither party introduced expert evidence to indicate where the sediment originated. Since the tenant is the party who is making a claim, the burden of proof is on the tenant to show on a balance of probabilities that the landlords are responsible for the cost of clearing sediment from the pipes in her manufactured home. In this case, the parties disagree about where the sediment originated and there is no independent evidence to tip the scales in favour of either position. For that reason, I find the tenant has not proven on a balance of probabilities that the landlords are responsible for the plumbing bill.

For the foregoing reasons, I dismiss the tenant's application in its entirety.

Conclusion

The tenant's application is dismissed. I grant the landlords an order of possession effective April 30, 2014 at 1 p.m.

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: March 18, 2014

Residential Tenancy Branch