Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC OLC FF

Introduction:

Both parties attended the hearing and gave sworn testimony. I find the tenant served the Application for Dispute Resolution hearing package dated August 15, 2017 by registered mail on the landlord. I find the documents were legally served pursuant to sections 81 and 82 of the *Manufactured Home Park Tenancy Act* (the Act). The tenant applies for orders as follows:

1. Compensation for expenses and aggravated damages caused by the landlord's actions; and
3. An order to recover the filing fee pursuant to Section 65.

Preliminary Issue:

Do I have jurisdiction to hear this matter? Is it out of time or has it already been heard?

Issues:

Has the tenant proved on a balance of probabilities that the landlord by act or neglect contravened the Act or the tenancy agreement causing her to suffer damages? If so, to what compensation has she proved entitlement?

Background and Evidence:

The tenant said she sold her unit in July 2015 but the possession date was not until August 28, 2015 so her tenancy did not end until that date. The landlord provided evidence that a new lease (lease in evidence) was entered into with another party on July 18, 2015 to be effective August 1, 2015 so he maintains the tenancy ended more than two years before the tenant filed her claim on August 15, 2017. He asks that her claim be dismissed.

Furthermore, the landlord states that the tenant brought an application in 2014 after the shed which is a significant portion of this application was removed. She told the arbitrator at that time that she was recovering the cost through insurance and did not present her case although the arbitrator asked her repeatedly what she wanted her to do about the shed. The tenant said that the arbitrator said there was too much

evidence to be heard and she should bring another application to deal with the shed at a future date. The arbitrator did not note this in her decision or give her leave to reapply. She said she checked several times with the office and was told she had two years from the end of the tenancy to bring an application so she filed it within the two years. She said she had many health problems, largely caused by the landlord's behaviour, and was dealing with insurance so it took time to assemble her evidence. She has filed a significant amount of evidence. The evidence mainly concerns the landlord's removal of the shed on her manufactured home site and the stress and harassment she suffered during this time.

The landlord states that the tenant's application made on August 15, 2017 is beyond the two year time limitation allowed in the Act and should be dismissed. He asserts her claim was also made on her application in October 2014 so should be dismissed as already heard. He has filed copies of the Park Rules and evidence to show that he acted legally to remove the shed and attempted for many months prior to resolve the matter before removing the shed. He provided evidence that the non complying shed was preventing the adjoining site from being leased.

Analysis and Conclusion:

Section 53(1) of the Act states that an application must be made within two years of the date the tenancy ends. Section 53(2) states if the application is not made within the two years, a claim under this Act or the tenancy agreement in relation to the tenancy ceases to exist. I find the tenant filed her Application for Dispute Resolution on August 15, 2017 and asserts her tenancy did not end until August 28, 2015 when possession of her manufactured home was completed. Part of the purchase and sale agreement is in evidence.

I find the landlord's evidence more credible than the tenant's as it appears the new tenancy commenced before the possession date of the manufactured home. I find the commencement of the new site lease does not necessarily have to coincide with the possession of the manufactured home on it. The lease signed with the new tenant is effective August 1, 2015. I note also that the tenant in her monetary claim is claiming rebates of rent only up until July 2015 which supports the landlord's position that she was no longer the tenant paying site rent in August 2015. I find also that the tenant's emails in evidence state numerous times in July 2015 that she 'can't wait to get out of this place'. I find the weight of the evidence is that she was no longer the tenant by August 15, 2015 which makes her application beyond the two year time limit.

I also find that she included this claim in her application in 2014. In details of the dispute, she lists 3 demands of the landlord and also states the 'landlord illegally destroyed my shed on July 29, 2014 with a backhoe, removing all my privacy. Shed was covered under insurance, cause of loss was determined as vandalism and malicious acts…I believe his actions have been unconscionable. Section 5(1) and (2), Section 7(1) and (2)… '. I find this supports the landlord's contention that this matter was heard in October 2014 and the tenant said she did not want damages as it was covered by insurance. The tenant notes section 7(1) of the Act which is the section that deals with damages. I note the arbitrator in that Decision did not give her leave to reapply for further damages which further supports the landlord's contention that it was heard and the tenant did not want to pursue it. Therefore, I find the matter is res judicata which means it was already heard and decided and again, I have no jurisdiction in this matter.

Concerning the merits of the case, I note awards for compensation are provided in sections 7 and 60 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.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

I find insufficient evidence that the landlord violated the Act or tenancy agreement. Section 32 of the Act provides a manufactured home park may establish rules and bylaws. I find one of the park rules was that any improvements had to be approved by the park and conform to the District Bylaws. I find the evidence is that the shed had no prior approval and did not conform to the District Bylaws. I find Rule C.2 of the Rules allows the landlord to go onto a tenant's site and remove and dispose of any fills or unapproved improvements with charges to be the responsibility of the tenant. In this case, the landlord did not charge for costs of removal of the offending shed. I find the

landlord followed the Rules and tenancy agreement which contains agreement to abide by the Rules. As the weight of the evidence is that the landlord did not violate the Act or the tenancy agreement, I find the tenant not entitled to recover any costs.

I find the evidence is that the landlord tried to work with the tenant and District to resolve the problem but the tenant consistently delayed and said she wanted to wait for the October hearing. The landlord then asserted his rights under the Rules and removed the shed.

The tenant submitted much evidence regarding health issues and harassment and claims aggravated damages. However, I find insufficient evidence that these health issues were caused by any violations of the landlord. It appears the landlord bought an established park where many older residents were comfortable with the arrangements. However, he, as the new owner, began to expect the Rules to be obeyed and this was a source of much discontent. However, I find the enforcement of the park rules is the right of the landlord under the Act and tenancy agreements. I find his efforts were not harassment as his notices and emails were polite and were requesting legal compliance. I find the tenant indicates in her evidence that she had other family health problems at the same time and this may have contributed to her problems.

Therefore, I dismiss her claim in its entirety. Firstly, it is out of time. Secondly, it is res judicata. Thirdly, I find the weight of the evidence is that the landlord did not violate the Act or tenancy agreement so is not liable to the tenant for damages she suffered.

Conclusion:

I dismiss the tenant's claim in its entirety without leave to reapply. I find she is not entitled to recover her filing fee due to lack of success.

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: February 20, 2018

Residential Tenancy Branch