Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for losses or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the landlords confirmed that on June 17, 2018, they received copies of the tenants' dispute resolution hearing package and written evidence package sent by the tenants by registered mail on June 12, 2018, I find that the landlords were duly served with these packages in accordance with sections 88 and 89 of the *Act.* The landlords also confirmed that the version of the tenants' application that they received was the tenants' application that amended the amount of their requested monetary award from $10,400.00 to $23,900.00. Since the tenants confirmed that they had received copies of the landlords' written evidence, I find that the landlords' written evidence was also duly served in accordance with section 88 of the *Act*.

Preliminary Issues

At the commencement of the hearing, Tenant JT (the tenant) testified that the amended request for a monetary award of $23,900.00 was somewhat incorrect as the last two items in their amended Monetary Order Worksheet sought a monetary award of either $8,400.00 in the event that they rented an apartment or home, or $6,000.00 in the event that they remained living in their fifth wheel in an RV Park. Since the stated amount of the requested monetary award essentially duplicated the first $6,000.00 of one of these requests, the true maximum amount the tenants were seeking was reduced by $6,000.00 to $17,900.00.

Landlord BP asked for a preliminary ruling as to whether the tenants' application correctly fell within the jurisdiction of the *Manufactured Home Tenancy Act*. Landlord BP testified that the

rental space was an area beside the landlords' barn and that the site was not a manufactured home park nor was the tenants' dwelling a manufactured home. Rather, it was a fifth wheel trailer that was towed to the site with the landlords' permission on a temporary basis. Landlord KP (the landlord) said that both parties knew that this was supposed to be a temporary arrangement based on the landlord's friendship with Tenant JT, who had been a closer friend for many years. The landlord testified that they "never once thought this was a tenancy."

Issues(s) to be Decided

Are the tenants entitled to a monetary award for losses and other money owed to them by the landlords arising out of this tenancy? Are the tenants entitled to recover the filing fee for their application from the landlords?

Background and Evidence

Although neither party signed any written tenancy agreement, the parties confirmed that text messages exchanged between Landlord KP (the landlord) and Tenant JT (the tenant) during late 2017 and January 2018 and their subsequent conversations established the landlords' agreement to allow the tenants to live in the tenants' fifth wheel trailer on the landlords' property as of February 1, 2018. While the landlord initially told the tenant that the tenants could live out of their trailer near the landlords' barn at no cost, the tenant insisted upon paying for their portion of the utilities (i.e., heat, hydro, water and internet) that the tenants would be using. The parties agreed that no utility payments were requested until after the first set of utility bills were received and after the tenants started living on the landlords' property. Once these bills were received, the parties agreed on February 25, 2018 that a monthly payment of $300.00 for utilities would be made by the tenants to the landlords.

By the end of March, the landlord learned from Tenant JM that the tenants were not nearly as destitute as the tenant had been leading the landlord to believe. By that time, the landlord was also upset that Tenant JM had taken over possession of the landlords' barn for his workshop and had installed shelving there. The landlords were also concerned about the number and type of people who were visiting the premises. The landlord approached the tenants with a request that in addition to the $300.00 payments for utilities that the parties had agreed to, the landlords were now requesting the tenants pay an additional $400.00 in monthly rent, totalling $700.00 per month.

Although the tenants objected to this increase, they agreed to pay this additional amount as of April 2, 2018. After making this payment for rent and utilities, the tenants began asking the landlords for a receipt for their April 2018 payment. The landlord gave undisputed sworn testimony that the landlords issued the tenants a receipt for the April 2018 payment on April 17, 2018.

On April 18, 2018, the landlord sent the tenant a text message advising that this living arrangement was not working out as planned and requested that the tenants remove their fifth wheel from the landlord's property by May 31, 2018. At the hearing, the landlord said she did not hand the tenants a more formal notice to end this tenancy because she was afraid of confronting them face-to-face.

The tenant confirmed that she informed the landlord that the tenants would move as soon as possible, as the tenant was by then concerned about the aggressive nature of the communication with the landlords. When the tenants could not locate another suitable site to relocate their fifth wheel or find alternate accommodations, the tenant requested additional time beyond May 31, 2018 to vacate the premises. The landlord responded by text message, advising that the tenants could remain on the property until June 15, 2018, the date of the extension the tenants had identified in their request for an extension.

The parties agreed that the tenants paid $700.00 in rent as requested for May 2018, but did not pay anything for June 2018.

Communication between the parties began deteriorating quickly on June 1, 2018, requiring the attendance of the police at the property twice between June 1, 2018 and June 6, 2018, when the tenants had their fifth wheel towed from this property.

Although there was no written agreement between the parties and the tenant testified that the landlords were aware that the tenants were hoping to buy their own place soon, the tenant claimed that the tenants expected this arrangement to continue into the future until they could purchase a home.

The tenants' amended application for a monetary award of $23.900.00 included the following items listed on their Monetary Order Worksheet:

Item	**Amount**
12 Month Eviction Notice was not Issued or Warranted; Tenants seeking $700.00 for 12 months = $8,400.00	$8,400.00
Illegal Rent Increase from $300.00 to $700.00; 2 months @ $400.00 each = $800.00	800.00
Moving Costs (Gas, Time for RV Tow, Storage Bin)	300.00
Future Rent Costs if moving to a 1 Bedroom Suite ($1,400.00 - $700.00 = $700.00 per month x 12 months = $8,400.00)	8,400.00
Future Rent Costs for an RV Park ($1,200.00	6,000.00

per month - $700.00 - $500.00 per month x 12 months = $6,000.00)	
Total Monetary Order Requested	**$23,900.00**

As noted above, the final two of the items listed on the tenants' Monetary Order Worksheet involved some duplication; the maximum amount the tenants were seeking was actually $17,900.00. The tenant asserted that changes to the *Act* that took effect in June 2018, entitled the tenants to the monetary awards the tenant was seeking. The tenant testified that she arrived at the above-noted figures after speaking with representatives of the Residential Tenancy Branch (the RTB).

Although the tenants maintained in their application that the landlords' actions had rendered them homeless in difficult housing market, the tenant testified that they had been living with the tenant's parents since ending this tenancy. The tenant testified that they were scheduled to move into their own rental unit on August 1, 2018, paying a monthly rent of $2,000.00 at this new location.

Analysis - Preliminary Issue - Analysis of Jurisdictional Question raised by Landlords

Section 1 of the *Act* provides the following definitions which are of relevance to the landlords' assertion that this was not a tenancy that fell within the jurisdiction of the *Act*:

> ***"manufactured home"*** *means a structure, other than a float home, whether or not ordinarily equipped with wheels, that is*
>
> > *(a)designed, constructed or manufactured to be moved from one place to another by being towed or carried, and*
> > *(b)used or intended to be used as living accommodation;*
>
> ***"manufactured home park"*** *means the parcel or parcels, as applicable, on which one or more manufactured home sites that the same landlord rents or intends to rent and common areas are located;*
>
> ***"manufactured home site"*** *means a site in a manufactured home park, which site is rented or intended to be rented to a tenant for the purpose of being occupied by a manufactured home;*

While this is not a typical manufactured home, I find that the tenants' fifth wheel does meet the definition of a manufactured home as outlined above. The parties agreed that the tenants had nowhere else they were living from February 1, 2018 until June 6, 2018, when the fifth wheel was removed from the landlords' property. There was also a designated site where the

landlords agreed the tenants could tow their fifth wheel to reside on the landlords' property. During the course of this tenancy, the tenants did not remove the fifth wheel from the landlord's property. On this basis, I find that the tenants' application is not excluded from the jurisdiction of the *Act* by way of any failure to meet the definitions outlined above from section 1 of the *Act*.

I have also given consideration to the landlords' claim that this was not a true tenancy, but an agreement to help out a close friend of the landlord's in need.

There are four fundamental essentials of a legal contract. These include:

- an offer
- an acceptance of that offer
- an intention to create a legal relationship; and
- a consideration (usually money).

Although no written tenancy agreement or contract was created, the *Act* allows that tenancies may be established without written tenancy agreements. The text messages entered into written evidence by both parties and the sworn testimony of the parties leaves little doubt that all four elements of a legal contract have been met; however, it appears that the four essential elements were phased in over time.

From the outset, there was very clearly an offer made of space where the tenants could have their fifth wheel towed, and where the tenants could reside. The fact that the landlords agreed to allow the tenants to tap into the landlords' utilities very clearly indicates that the landlords fully expected the tenants to reside on the property. The tenant's text messages confirmed that they had accepted the offer to reside there. However, the landlords maintained that they never intended to create a legal relationship regarding this arrangement and consideration was not initially conveyed to the landlords. In fact, the written evidence submitted reveals that when this was first discussed the landlord did not even expect that any consideration (i.e., monetary payment) would form part of their contract. By the time the tenants actually moved their fifth wheel onto the premises, the tenants had offered consideration in the form of an unspecified payment to be determined later for the cost of utilities that they would be using during their stay at the premises. When the parties settled on $300.00 as the correct payment for utilities, this established that there was consideration being provided by the tenants to the landlords. Since this arrangement was not one required by the landlords at the outset and the arrangement was between two close friends, it remains questionable as to whether the tenants' agreement by February 25, 2018 to share in the cost of the landlords' utility costs truly constituted an intention to create a legal relationship, at least on the part of the landlords.

There is little doubt that the landlords' subsequent request for the payment of $700.00 in monthly rent for this space and the use of the landlords' utilities and internet established that by April 2, 2018, when the tenants made their first $700.00, there was a legal relationship in place between the parties. By that time, the landlords were referring to the payments as "rent" and that the tenants, however, dissatisfied with this revised request from the landlords were paying

the requested amount. Shortly thereafter, the tenants began asking for receipts, another feature of a formal legal relationship, and the landlords did in fact provide a receipt for the April 2018 payment.

For these reasons, I find that a contract existed by at least April 2, 2018, and that the arrangement established between these parties constituted a tenancy for the purposes of the *Act*.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Section 7(1) of the *Act* establishes that a party who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. In this case, the onus is on the tenants to prove on the balance of probabilities that the landlords are responsible for losses that the tenants experienced due to a contravention of the *Act*, the regulations or the tenancy agreement.

In this case, there appear to be a number of contraventions of the *Act* by both parties. The landlords did not create a written tenancy agreement with the tenants, did not provide receipts to the tenants for some of their payments, and did not issue a notice to end tenancy on the prescribed RTB forms in writing to the tenants. For their part, I heard undisputed sworn testimony that Tenant JM moved his possessions into the landlords' barn without the landlords' authorization, undertook renovations to the barn to utilize the barn as his workshop, again without the landlord's permission, and remained in the rental unit from June 1, 2018 until June 6, 2018, without paying rent to the landlords for that period of their tenancy. Although the tenants were responding to a notice to end this tenancy from the landlords that they knew was illegal, there is no evidence that the tenants issued their own written notice to end their tenancy to the landlords, another requirement of the *Act*.

The tenants did not apply to the RTB to cancel the landlords' notice to end tenancy issued by text message. The tenant gave sworn testimony to confirm the landlords' claim that upon receipt of the notice to end tenancy, which did not comply with the *Act*, the tenant immediately agreed to vacate the property as soon as possible.

In their written evidence and in the tenant's sworn testimony, the only reference to the legal authority that would entitle the tenants to any of the monetary awards they were seeking was a

vague reference to changes that were made to the *Act*, which took effect on June 6, 2018. While the nature of the communication that the tenant had with representatives of the RTB is unclear, I suspect that the tenant must have misunderstood the information conveyed to her when she spoke with these representatives. In any case, I find that the provisions whereby increased compensation is allowed under the *Act* that came into effect in June 2018 have no bearing on the current application. The ability to claim for 12 months of rental equivalency apply to very specific and different circumstances than those presented in this case. In this case, the landlords issued an illegal notice to end this tenancy, and the tenants agreed to move out as soon as possible, without sending any formal written notice of their own to end this tenancy. When the tenants could not find accommodations that suited their needs by the date when the landlords were seeking an end to this tenancy, the tenant asked for an extension of time until June 15, 2018, a date the parties agreed upon. Once more, neither party committed anything into the form of a written contract, nor did they sign a Mutual Agreement to End Tenancy. The tenants also failed to pay any rent for any portion of June 2018.

There is no legislative provision for the tenants' application for a monetary award of $8,400.00 from the landlords for ending their tenancy without a proper notice to end tenancy having been issued. The tenants could have but did not dispute the landlords' notice to end tenancy and did not seek any other order from the RTB to place restrictions on the landlords' interaction with the tenants. I dismiss this element of the tenants' application without leave to reapply.

Similarly, there are no provisions in the *Act* that would enable the tenants to obtain the difference between what the tenants expected to be paying should they end up renting either a one bedroom suite or a site in an RV park and what they were paying in their very short term month-to-month tenancy on the landlords' property. The only way that such a claim could be successful would be if the landlords had agreed to a fixed term tenancy with the tenants, which is by no means the case in this instance. For these reasons, I also dismiss the last two of the tenants' requests for monetary awards identified in their amended Monetary Order Worksheet without leave to reapply.

There is also no provision in the *Act* for the recovery of moving costs when a tenant agrees to vacate premises to comply with a notice to end tenancy, whether or not it was issued correctly. In this case, the tenants produced no evidence or receipts for these costs, other than stating that a relative towed the tenants' fifth wheel to the driveway of the tenant's parents, a 20 minute drive away from the landlords' property. I dismiss this element of the tenants' application without leave to reapply.

I have also considered the tenants' application for a monetary award for what the tenants maintained was the illegal rent increase imposed against them by the landlords for April and May 2018. Were I of the opinion that a contractual agreement existed between the parties for February and March 2018, I may very well find that the landlords issued an unwarranted and illegal rent increase that took effect in April and May 2018. In this case, and as was outlined

earlier in this decision, I am not satisfied that there was a commitment by both parties to enter into a legal relationship until the landlord approached the tenants in late March 2018 to seek a payment for monthly rent in addition to the utility payments that the tenants had insisted on paying when they first moved onto these premises. I have also taken into account the goodwill expressed by the landlord prior to that time, when she was not even interested in obtaining any payments from the tenants for their occupancy of an unused portion of their property. I find that the landlords did not commit to entering into a legal relationship with the tenants until late March 2018 when they first requested the payment of rent from the tenants.

Under these circumstances, I find that no oral contract for tenancy on the property existed between the parties until April 2, 2018, when the tenants started paying rent in addition to their previous payments to share utilities with the landlords. Until that date, I find that this arrangement did not fall under the jurisdiction of the *Act*. Once there was a clear commitment from both parties that they had a legal relationship and the tenants started paying $700.00 per month, this became a tenancy for the purposes of the *Act*. As I find that no tenancy existed between these parties until April 2018, I dismiss this portion of the tenants' application as I find that the only agreed upon tenancy that fell within the jurisdiction of the *Act* was that which took effect on April 1, 2018.

The tenants bear the costs of their filing fee.

Conclusion

I dismiss the tenants' application 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: July 30, 2018

Residential Tenancy Branch