Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, MNRL, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the "Application") that was filed by the Landlord under the *Manufactured Home Park Tenancy Act* (the "*Act*"), seeking unpaid rent, compensation for other money owed, and recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the owner of the Manufactured Home Park (the "Landlord"), and an agent for the Landlord (the "Agent"), both of whom provided affirmed testimony. The Tenant did not attend. The Landlord and Agent were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") state that the respondent must be served with a copy of the Application and Notice of Hearing. As the Tenant did not attend the hearing, I confirmed service of these documents as explained below.

The Landlord provided proof that the Application and the Notice of Hearing were personally served on the Tenant by a process server on June 4, 2018. As a result, I find that the Tenant was personally served with these documents on June 4, 2018.

In the hearing the Landlord testified that she filed an Amendment to an Application for Dispute Resolution (the "Amendment") with the Residential Tenancy Branch (the "Branch"), a copy of which was not before me for consideration, increasing the monetary claim from $9,345.00 to $16,617.00. The Landlord testified that she filed the Amendment with the Branch and then served the Amendment on the Tenant by way of a process server on June 4, 2018. I accepted testimony from the Landlord regarding the Amendment and the claims made therein and advised her that she had until 12:00 P.M. on July 11, 2018, to submit a copy to the Branch for my consideration or any testimony in relation to the Amendment would not be considered.

On July 10, 2018, the Landlord submitted a copy of an Amendment dated May 19, 2018, increasing the amount of the monetary claim to $16,617.00; however, the Amendment is not stamped as having been received by the Branch, and was not accompanied by any documentation to demonstrate that it had in fact been received by the Branch directly or through a service BC location. Further to this, there are no records at the Branch indicating that the Amendment was ever received by the Branch directly or through a Service BC location prior to being uploaded to the Dispute Access Site on July 11, 2018.

In reviewing the documentary evidence before me I also became aware that two other Amendments had been uploaded to the Dispute Access Site as follows: one dated May 2, 2018, in the amount of $15,252.00, and one dated May 11, 2018, in the amount of $15,249.00. Similar to the Amendment dated May 19, 2018, neither one was stamped by the Branch as having been received nor was there any accompanying documentary evidence to suggest that either Amendment had been received by the Branch directly or through a Service BC location.

Section 4 of the Rules of Procedure states that an Application may be amended to add, alter, or remove claims made in the original Application by completing the Amendment form and filing the completed Amendment and supporting evidence with the Branch directly, or through a Service BC location, as soon as possible and in any event, not less than 14 days before the hearing. Further to this, I note that page 2 of the Amendment clearly states in bold letters near the top of the form that Amendments cannot be submitted online through the Dispute Access Site.

In reviewing the documentary evidence before me, it appears as though all three Amendments were submitted through the Dispute Access Site; however, there is no documentary evidence in support of the Landlord's testimony that these Amendments were received by the Branch directly or through a Service BC location and the Branch records do not indicate that these amendments were ever received. Based on the documentary evidence before me, I believe that the Landlord uploaded the Amendments to the Dispute Access Site for my consideration but failed to correctly file them with the Branch either directly or through a Service BC location. As a result, I am not satisfied that the Landlord properly amended her Application pursuant to rule 4 of the Rules of Procedure. Although rule 4.2 states that an Application may be amended in the hearing in circumstances that can reasonably have been anticipated, I do not find it reasonable to infer that the Tenant could have anticipated the $7,272.00 increase in the Landlords monetary claim or the reasons for such an increase. As a result, I have not

accepted the Landlord's Amendments for consideration in this matter and no findings of fact or law have been made regarding claims not listed in the original Application.

In the original Application the Landlord indicated that they are seeking $9,345.00; $5,520.00 for unpaid rent and storage fees, and $3,825.00 for the cost of securing the manufactured home, filing and serving the Application, obtaining a manufactured home search, cleaning the manufactured home site, and demolition. However no breakdown of these individual costs was provided in the Application. Further to this, no Monetary Order Worksheet in the amount of $9,345.00 was submitted by the Landlord for my consideration.

Section 52(2) of the *Act* states that an application for dispute resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings. Section 52(5) goes on to state that the director may refuse to accept an application for dispute resolution if the application does not comply with subsection (2).

As the Application does not provide a breakdown of the amounts sought for each part of the Landlord's claim, or any indication of how the amounts sought were calculated, and no Monetary Order Worksheet was submitted, I find that the Application does not include full particulars of the dispute as required in section 52(2) of the *Act*.

The opportunity to know the case against you and to provide evidence in your defense is fundamental to the dispute resolution process. As the Application does not disclose full particulars of the dispute, I find that the Tenant therefore did not have a fair or full opportunity to know the case against him or to provide evidence in his defense. Based on the above and pursuant to section 52(5) of the *Act*, I therefore dismiss the Landlord's Application with leave to reapply and I encourage the Landlord to review section 52 of the *Act* as well as the Rules of Procedure prior to re-filing the Application. As the Landlord's Application is dismissed, I decline to grant recovery of the filing fee.

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: August 1, 2018

Residential Tenancy Branch