Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR, RR, OLC, RP, FFT, OPR-DR, MNR-DR, FFL

Introduction

The tenants applied to dispute a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") pursuant to section 39 of the *Manufactured Home Park Tenancy Act* (the "Act"). In addition, they applied for relief under sections 26, 55, and 58 of the Act.

By way of cross-application the landlord applied for an order of possession and a monetary order pursuant to sections 48 and 60 of the Act.

Both parties seek recovery of the application filing fee under section 65 of the Act.

A tenant, the landlord, and an assistant for the landlord attended the hearing on October 5, 2021. It is noted that while there are three tenants named in the applications, only the tenant who attended the hearing is presently residing in the manufactured home.

No service issues were raised, and Rule 6.11 of the *Rules of Procedure* was explained.

Preliminary Matter: Dismissal of Unrelated Claims

Rule 2.3 of the *Rules of Procedure* states that "Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply."

The tenants' application contains five matters unrelated to the most important claim, namely, whether the Notice is to be dismissed or upheld. As such, the tenants' claims for orders under sections 26, 55, and 58 of the Act are dismissed with leave to reapply. That said, the underlying issue of repairs (which form part or all of the basis on which the now-dismissed claims were made), will be addressed in this decision.

Issues

1. Are the tenants entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession and a monetary order?
3. Is either party entitled to recover the cost of their application filing fee?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure,* was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute and to explain my decision is reproduced herein.

The tenancy began May 1, 2008. Monthly rent is $306.22. A copy of the *Manufactured Home Pad (Site) Tenancy Agreement* (the "tenancy agreement") was submitted into evidence. Also included in evidence is a five-page "Rules and Regulations" document that presumably was included in the tenancy agreement as an addendum. It is noted that this addendum was signed by the tenant's parents in 2008, before the tenant became the sole occupant of the manufactured home.

The landlord gave evidence that he served the Notice on or about June 3, 2021. Service of the Notice was completed by the Notice being left in the mailbox or slot. A copy of the Notice was submitted into evidence, and the landlord confirmed that it had been issued because the tenant failed to pay rent in the amount of $136.50. The landlord seeks an order of possession of the manufactured home site for unpaid rent, a monetary order in the amount of $136.50, and, $100.00 to pay for the cost of the application filing fee.

The tenant argued that (as described in their application for dispute resolution):

> Landlord refused to fix the main shut off valve under the trailer, that was spraying a lot of water, causing a large pool of water in the tenant's yard. After speaking to both the RTO and getting confirmation from a plumber who inspected and patched the leak, we advised Mr. [Landlord] that we would be deducting emergency repairs from the pad rent, as it was not caused due to neglect per the plumber's notes on the invoice. Mr. [Landlord] was provided with a copy of the invoice for 136.50[.]

In this dispute, the central and sole point of disagreement is whether the main shut off valve under the trailer is the responsibility of the tenants, or that of the landlord. Both parties provided testimony and submissions on this issue, which each party arguing for

and against the issue of who is responsible. Neither party disputed that there was a leak. Without the need to reproduce that specific testimony further, the terms of the tenancy agreement will be examined more closely in the Analysis portion of the decision, below, along with additional evidence provided by the parties.

Both parties testified about additional matters. However, only testimony and evidence pertaining to the issue of this dispute will be addressed.

Analysis

As a starting point, section 20(1) of the Act states that a "tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent."

Section 39(1) of the Act permits a landlord to end a tenancy if rent is unpaid by giving notice to end tenancy. In this dispute, the landlord gave notice in the form of a 10 Day Notice to End Tenancy for Unpaid Rent.

The question that must be answered is this: did the tenant have a right under the Act to deduct a portion of the rent? In this case, a deduction of $136.50.

It is the tenant's position that this amount was deducted from the rent because the landlord did not meet his obligations under section 27 of the Act. This is the section of the *Manufactured Home Park Tenancy Act* which addresses emergency repairs.

"Emergency repairs" (as defined in section 27(1)(a) through (c) of the Act) means repairs that are

(a) urgent,
(b) necessary for the health or safety of anyone or for the preservation or use of property in the manufactured home park, and
(c) made for the purpose of repairing
    (i) major leaks in pipes,
    (ii) damaged or blocked water or sewer pipes,
    (iii) the electrical systems.

The tenant argued that a water valve that was “spraying a lot of water” and “causing a large pool of water in the tenant’s yard” was, by its very definition, “urgent.” The repair to the valve was necessary for the preservation and use of property (that is, the manufactured home) in the manufactured home park. The landlord argued that the repairs could not have been considered “an emergency by any stretch” given that the repairs were not completed until May 26.

With respect, I am not persuaded by that argument. Had the landlord effected repairs on or shortly after May 16, then the urgent repairs would not have had to be undertaken by the tenant. In other words, the landlord’s refusal to initiate or make repairs cannot then serve as a reason to categorize those repairs as anything less than urgent.

Finally, the tenant submitted that the water main valve leak meets the definition of it being a “major leak in the pipes.” Based on the evidence before me, I am persuaded that the tenant has proven, on a balance of probabilities, that the repairs needing to be made to the valve leak meet the definition of “emergency repairs.”

Once a tenant establishes that emergency repairs are needed, they must ensure the following before they undertake those repairs (section 27(3) of the Act):

> A tenant may have emergency repairs made only when all of the following conditions are met:
>
> (a) emergency repairs are needed;
>
> (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
>
> (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

In this dispute, there is no reason why the emergency repairs would not be needed. After all, water was clearly escaping from the valve and repairs were needed.

In respect of the requirement under section 27(3)(b) of the Act, the tenant testified that she contacted the landlord on May 13, and again on May 16, 2021. The landlord eventually attended and conducted an inspection of the problem.

Three times the tenant asked the landlord if he would repair the valve and each time he said no. (However, the landlord did, at least at one point, offer to split the bill.) The tenant brought in a plumber but the landlord "demanded" to know the qualifications of the plumber. On May 26, 2021, the repairs were finally made. According to the tenant's plumber there was "no way on God's green earth" that the valve corrosion, which apparently caused the leak, was caused by the tenant's negligence.

Based on the evidence before me, it is my finding that the emergency repair was needed, that the tenant made two attempts to contact the landlord, and that following these attempts the landlord had a reasonable time to make the repairs. However, the landlord chose not to make the repairs after being asked three times and the tenant had her own plumber come in.

The next subsection of section 27 of the Act that must then be considered is section 27(5) of the Act which states that

> A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant (a) claims reimbursement for those amounts from the landlord, and (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

There is no disputing the fact that the tenant claimed reimbursement for the $136.50. Indeed, the landlord confirmed that he specifically warned the tenant not to deduct that amount from the upcoming rent. There is a copy of the receipt for the amount claimed.

As an aside, while a claim made by tenant under section 27 of the Act cannot be made when the emergency repairs are "for damage caused primarily by the actions or neglect of the tenant" (see section 27(6) of the Act), there is no evidence before me to find that the valve leak was caused by the actions or the neglect of the tenant.

On this point, the landlord submitted a two-page letter authored by one Mr. Stern, a general contractor, in which the contractor provides his understanding of residential tenancy law, and also explains that the "line froze due to the failure of the heat tape."

I note that the contractor did not attend the hearing to testify to the matters for which he portrays himself an authority. He did not attend to affirm, under oath, the content of the letter. He does not appear to be a lawyer, and, he has not provided any supporting evidence that the valve= leak was caused by the tenant's actions or neglect. As such, I place no evidentiary weight on the contractor's letter, or the statements therein.

We now arrive at section 27(7) of the Act which states that

> If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

The landlord never reimbursed the tenant under subsection 27(5) of the Act and thus I find that the tenant was permitted to deduct $136.50 from the rent.

Turning now to the tenancy agreement and its addendum, upon which much of the parties referred and relied, there are two clauses of note. Clauses 20 and 13.

Clause 20 of the *Rules & Regulations* addendum speaks to the landlord's responsibilities. For the benefit of the parties and the reader this section is reproduced in full as follows (minor formatting made by the arbitrator):

> 20. LANDLORD RESPONSIBILITIES
>
> All underground services supplies by the landlord are his responsibility.
> All other services are the responsibility of the relevant service companies.
> All landlord's public facilities, roadways, playgrounds, boulevards, and unoccupied areas and lots will be maintained by the landlord.
> The landlord pays all lands taxes, water, sewer and garbage.

The tenant argued that, while the water valve itself is not underground, it is the landlord's responsibility to fix that value because the underground service – that is, the water – lies within the landlord's responsibility. Conversely, the landlord argued that it is the tenant's responsibility for "above ground" services

Clause 13 of the tenancy agreement has the heading "REPAIRS & MAINTENANCE." This section provides a rather mealy-mouthed explanation as to what the landlord's and tenant's duties are at the manufactured home park and on the pad. Nothing specific is said in regard to the water lines or so forth.

The fourth paragraph is about emergency repairs. It speaks to what the landlord and a tenant must do in the case of emergency repairs. The language reflects, to some degree, section 27 of the Act. I say to some degree because the wording at the very end of this clause reads as follows (emphasis in original):

> Emergency repairs must be urgent and necessary for the health and safety of persons or preservation of property and are limited to: (i) major leaks in the pipes or roof of a common building, or (ii) damaged or blocked water or sewer pipes or plumbing fixtures ***(not including those water or sewer pipes or plumbing fixtures contained within or under the manufactured home).***

The clause conveniently omits electrical systems from the definition, which are contained within subsection 27(1)(c)(iii) of the Act. In any event, the clause attempts to limit the definition of what constitutes an "emergency repair" under the Act. In addition, the wording "under the manufactured home" is vague.

Does it mean under the manufactured home but above ground-level, or does it mean under the manufactured home including into the ground and soil beneath? The tenant argued that while the valve is above-ground, it is part of the underground water service provided by the landlord. Conversely, the landlord argued that the value is above-ground, and according to his interpretation of the addendum it is thus the tenant's responsibility.

Where this leads me is a finding that the clause in the tenancy agreement addendum is both inconsistent with the Act, and vague.

Section 6(3) of the Act clearly states that a term of a tenancy agreement is not enforceable if "the term is inconsistent with this Act" and if "the term is not expressed in a manner that clearly communicates the rights and obligations under it." In this case, the term or clause reflecting emergency repairs is inconsistent with the requirements, rights, and obligations for emergency repairs under section 27 of the Act. Moreover, the very fact that the parties disagree over whether an above-ground water valve connected to the landlord's underground water supply is part of the same system is evidence of the clause's vagueness. It leads me to conclude that the term is vague and unenforceable.

Addressing this last conclusion in more detail, it is important to note that where there is an ambiguous term of an agreement, where the parties dispute the term, and where neither party has provided additional evidence that might bring clarity to the term, I must apply the *contra proferentem* rule.

Contra proferentem is a rule of contractual interpretation resulting in an ambiguous term of a contract being construed against the party responsible for its inclusion in the contract or agreement. This interpretation therefore favours the party who did not draft the term, because the party not responsible for the ambiguity should not be made to suffer for it. This rule endeavours to encourage the drafter to be as clear as possible when crafting an agreement or contract upon which the parties later rely.

In this case, it was the landlord (or his predecessor) who was responsible for drafting clauses 13 and 20. Having found that the "under the manufactured home" term ambiguous, I must apply *contra proferentem* and thus find that the term does not require the tenant to pay for the repairs made to the water valve.

That said, the tenant is responsible for being diligent and exercising care and attention to water lines and so forth under the manufactured home. This includes ensuring that there is proper and adequate heat tracing and that the pipes do not run the risk of bursting during winter. In that case, the tenant might very well be liable to pay for any repair costs.

None of what I have explained above, however, should be in any way construed to mean that a landlord cannot define what a tenant is responsible for. Indeed, water and sewer pipes *inside* a manufactured home ought to be the sole responsibility of a tenant. And that part of clause 13 makes sense, is consistent with the Act, and is not by any interpretative stretch vague or ambiguous.

Having found that the tenant had a right under section 27(7) of the Act to deduct $136.50 from the rent, the Notice is hereby ordered cancelled.

Section 65 of the Act permits an arbitrator to order compensation for the cost of the filing fee to a successful applicant. As the tenant succeeded in her application, I grant $100.00 in compensation to cover the cost of the filing fee. Pursuant to section 65(2) of the Act the tenant is therefore authorized to deduct $100.00 from a future rent payment. The tenant should, but is not required to, notify the landlord when this deduction is about to be made.

Last, in respect of the tenant's claim for $100.00 in compensation, as described on the Monetary Order Worksheet, to pay for "wood + supplies to fix hole in siding," there are no estimates, work orders, or any documentation to prove that this is the amount it will cost to repair the siding. As such, this aspect of the tenant's application is dismissed.

Conclusion

The tenant's application is granted.

The 10 Day Notice to End Tenancy issued on June 3, 2021 is hereby cancelled. The Notice is of no legal force or effect and the tenancy shall continue until it is ended in accordance with the Act.

The landlord's application is dismissed, without leave to reapply.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: October 6, 2021

Residential Tenancy Branch