



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding OSBORNE BAY RESORT MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNC-MT, MNDCT, OLC

Introduction

A hearing was convened on May 02, 2022 in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to cancel a One Month Notice to End Tenancy for Cause, for more time to file an application to cancel a One Month Notice to End Tenancy for Cause, for a monetary Order for money owed or compensation for damage or loss, and for an Order requiring the Landlord to comply with the *Manufactured Home Park Tenancy Act (Act)*.

The hearing on May 02, 2022 was adjourned for reasons outlined in my interim decision of May 02, 2022. The hearing was reconvened on August 23, 2022. The August 23, 2022 hearing was adjourned as we had insufficient time to consider the issues in the time allotted.

The hearing was reconvened again on November 10, 2022. as we had insufficient time to consider the issues in the time allotted. The November 10, 2022 hearing was adjourned as we had insufficient time to consider the issues in the time allotted.

The hearing was reconvened again on April 06, 2023 and was concluded on that date.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant, with the exception of legal counsel and the witnesses with the initials "RL" and "MJ", affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant, with the exception of legal counsel and the four witnesses, affirmed they would not record any portion of these proceedings.

Preliminary Matter #1

I inadvertently neglected to affirm the Witnesses with the initials “RL” and “MJ”. I find that this has no significant impact on the testimony they provided and I have no reason to doubt the truthfulness of their evidence, despite not being affirmed.

Preliminary Matter #2

I mistakenly understood that the Witness with the initials “QL” was present to “assist” the Landlord at these proceedings. After the Witness with the initials “MJ” and “RL” testified, I realized that “QL” was present as a Witness. As such, “QL” was present during testimony provided by “MJ” and “RL”.

Given the nature of the testimony provided by these witnesses, I find that “QL” was not unduly influenced by the testimony of “MJ” and “RL”. I am satisfied that the quality of the testimony provided by “QL” was not impacted by the testimony of “MJ” and “RL”.

Preliminary Matter #3

The matter of jurisdiction was raised at the hearing on August 23, 2022. As outlined in my interim decision of August 24, 2022, I find that I have jurisdiction over this dispute and I will be determining the issues in dispute in this Application for Dispute Resolution.

Preliminary Matter #4

At the hearing on August 13, 2022, the Tenant stated that he has moved his unit off the site and he no longer wishes to dispute the One Month Notice to End Tenancy for Cause. On the basis of this information, I find that the Tenant has withdrawn his

application to cancel a One Month Notice to End Tenancy for Cause and his application for more time to apply to cancel a One Month Notice to End Tenancy for Cause.

Preliminary Matter #5

At the conclusion of the hearing on April 06, 2023, Legal Counsel for the Landlord requested leave to submit additional written submissions. This request was denied, as the Landlord has had ample opportunity to present submissions and to submit documentary evidence.

Preliminary Matter #6

This decision only contains evidence and submissions which I believe are relevant to the issues before me. Some issues raised by the Landlord, such as why the Tenant moved from Alberta and when he sold a house that he owned in Alberta, are not summarized in this decision because they are simply not relevant to my decision.

Issue(s) to be Decided

Is the Tenant entitled to compensation for costs incurred related to being unable to occupy the rental site?

Background and Evidence

At the first hearing the Landlord and the Tenant agreed that the trailer was moved onto the site in July of 2021. At the hearing on November 10, 2021 the Landlord stated that the trailer was moved onto the site in May of 2021 and the Tenant stated that he thinks it was moved onto the site in August of 2021.

The Landlord and the Tenant agree that:

- The Tenant paid monthly rent, which was due the first day of each month;
- The Tenant was required to pay for hydro during the tenancy, based on consumption;

- The Tenant received a letter, dated November 16, 2021, which declared he must vacate the site by December 17, 2021;
- On January 27, 2022 the Landlord gave the Tenant written notice that hydro service would be terminated on January 29, 2022;
- The Tenant stopped living on the site on January 28, 2022; and
- The Tenant removed the trailer from the site in late June of 2022.

At the first hearing the Tenant stated that the monthly rent was \$525.00. At the first hearing the Landlord stated that the monthly rent was \$525.00 in the summer and \$505.00 in the winter.

At the hearing on November 10, 2022 the Tenant reiterated that the rent was \$525.00. At the hearing on November 10, 2022 the Landlord stated that the rent was \$540.00 for the months of April through October and that it was \$520.00 for November.

The Landlord and the Tenant agree that rent was paid until the end of November of 2021. The Tenant stated that rent was paid for December but it was returned by the Landlord. The parties agree that no rent was collected for any period after December 01, 2021.

The Landlord stated that hydro service was terminated on January 29, 2022. The Tenant stated that it was terminated on January 28, 2022.

The Landlord stated that approximately one week prior to January 27, 2022 the Tenant was given an earlier notice of the Landlord's intent to terminate hydro service. The Tenant denies receiving notice prior to January 27, 2022. The Landlord stated that proof of the earlier notice was not submitted as evidence.

In a letter dated January 27, 2022, the Landlord informed the Tenant that water and hydro service to the site would be terminated on January 29, 2022. The Tenant stated that water service was terminated on January 29, 2022.

The Landlord stated that the Landlord does not have the ability to terminate water service to the site and that it was not terminated. She stated that the valve that permits water to flow to the site was broken sometime prior to January 29, 2022, which prevented the Tenant from accessing water. She stated that the valve was not broken by the Landlord. The Tenant stated that the valve was broken on January 29, 2022.

The Tenant stated that he stopped living on the site on January 28, 2022. The Landlord stated that she thinks the Tenant stopped living on the site at the end of January of 2022.

In the Monetary Order Worksheet dated February 11, 2022, the Tenant claimed \$300.00 in compensation for food from his refrigerator and freezer, which he alleges was spoiled as a result of the hydro service being terminated. In the Monetary Order Worksheet dated April 07, 2022, the Tenant claimed \$525.00 in compensation for food from his refrigerator and freezer that he alleges was spoiled as a result of the hydro service being terminated.

When asked about the aforementioned discrepancy in claims, the Tenant stated that when he claimed compensation for loss of food in the amount of \$300.00, he did not include the food he had stored in the freezer. He stated the claim for \$525.00 includes a claim for food from the freezer and the refrigerator.

The Manager stated that she worked at a recreational vehicle dealership for many years and she knows that all refrigerators in recreational vehicles are capable of being powered with propane. She stated that there is a propane tank at the site and the Tenant could have operated his refrigerator with propane.

The Tenant stated that he had propane at the site but his refrigerator was not equipped to operate with propane.

The Tenant stated that he vacated the site because he was unable to live on the site without water and hydro service. He stated that he lived in hotels for several months after vacating the site and he is seeking compensation for the cost of those hotel accommodations. He stated that he lived in hotels until the end of July of 2022, at which point he moved to Calgary and resided with a friend.

The Tenant stated that he made several efforts to find a site for his trailer in the neighboring area but was unable to do so. He stated that he also made several efforts to find an apartment in the area but was unable to find a suitable apartment. He submitted no evidence of his efforts to find an alternate site or alternate accommodations.

The Manager stated that on November 09, 2022 she spoke with representatives of a campground in Nanaimo and one in Chemainus, at which time she was informed that there were sites available in January of 2022 and that there are still sites available.

The Previous Manager stated that on November 08, 2022 she spoke with representatives of a local campground and was informed that there were many sites available in January of 2022.

The Witness with the initials "MJ" stated that:

- He manages a campground in a neighboring community;
- In June of 2022 he had 3 sites available that would accommodate the Tenant's trailer;
- The previous campground manager advised him that there were sites available prior to June of 2022;
- The sites have power and water, but no cable; and
- The weekly rates are \$300.00 plus GST.

The Witness with the initials "RL" stated that:

- He owns a campground in a neighboring community;
- Between February of 2022 and July of 2022, he had sites available to accommodate the Tenant's trailer, although sites may not have been available during long weekends;
- The sites have power, sewer, and water;
- The weekly rates are \$222.00 plus GST, \$338.00 plus GST, and \$384.16 plus GST, depending on the season; and
- Prior to 2022 the Tenant stayed at his campground on 4 or 5 occasions, for short periods of time.

The Witness with the initials "QL" stated that:

- He owns a campground in a neighboring community;
- Between January of 2022 and July of 2022, he had sites available to accommodate the Tenant's trailer;
- The sites have power, cable, and water;
- The monthly rates are \$700.00; and
- He has no record of the Tenant staying in his campground between January of 2022 and July of 2022.

The Witness with the initials “MM” stated that:

- She owns a campground in a neighboring community;
- Between January of 2022 and July of 2022, she had sites available to accommodate the Tenant’s trailer;
- The sites have power and water;
- The monthly rates are \$640.00 and \$840.00, depending on the season; and
- There is no record of the Tenant staying in her campground between January of 2022 and July of 2022.

The Tenant did not refute any of the testimony provided by “MM”, “QL”, RL” or “MJ”. He stated that when he stayed at the campground owned by “RL”, he had a smaller recreational vehicle that could be moved more easily. The Tenant stated that the unit he had on this site was 44’ and he could not move it without assistance from a third party.

The Landlord suggested that the Tenant could have continued to live on the site if he used a generator to provide power to the site. The Tenant stated that he could not afford a generator and that he could not use a generator to provide power to the unit.

The Tenant is also seeking compensation for meal costs while residing in hotels. He has claimed compensation of \$4,572.50 which he stated is based on the CRA daily meal allowance.

In response to questions asked by Legal Counsel for the Landlord, the Tenant stated that:

- During this tenancy he was working at a service station in a nearby community;
- He typically worked from 9:00 or 9:30 a.m. to 5:00 p.m. on weekdays;
- He started working for that employer 2.5 years ago;
- He sometimes bought lunch when he was working and he sometimes made his lunch;
- When he stopped living on the site, he no longer had the ability to make his lunch or dinner;
- The hotel he moved to was a bit further from work than the tenancy site; and
- He does not have a home in Calgary.

The Tenant is seeking compensation for being unable to use cable service. In one Monetary Order Worksheet he claimed compensation of \$390.00 and in a subsequent

Monetary Order Worksheet he claimed compensation of \$1,170.00. In support of this claim he stated that:

- cable service was not included with his rent;
- he paid \$105.00 per month for cable service at the site;
- this included internet and television service;
- he did not provide evidence that he paid for monthly cable service;
- he was unable to use that service after he vacated the site;
- he did not initially cancel his service as he hoped to continue living at the site if his Application for Dispute Resolution was successful;
- he is seeking compensation for cable bills from February, March, April, and May of 2022; and
- he had access to television and internet at the hotels he stayed at.

The Manager stated that cable service is provided to occupants by the Landlord, although some occupants pay an additional fee for additional television channels.

Legal Counsel for the Landlord argued that since the Tenant has not paid rent for leaving his trailer on the site, the lost income the Landlord experienced should offset any compensation awarded to the Tenant.

The Landlord stated that on January 29, 2022 she was looking at the hydro meter when the Tenant pushed her into the bushes. The Tenant stated that he took pictures of the Landlord on January 29, 2022 but he did not push her. The Manager stated that she witnessed this incident. Legal Counsel for the Landlord stated that this incident is relevant to these proceedings because they show the Landlord had reason to fear the Tenant.

Legal Counsel for the Landlord argued that the Tenant's violation of park rules should be considered when determining whether compensation is due to the Tenant.

Legal Counsel for the Landlord argued that the Tenant seriously violated park rules when he constructed a fence and deck, the extent of which vastly exceeded the permission granted by the Landlord.

Legal Counsel for the Landlord argued that because of the continuing violations of park rules and the Tenants failure to vacate the site on the basis of the letter dated November 16, 2021, in which he was directed to vacate the site, the Landlord concluded that turning off the power was the only option they had to remove the Tenant

from the site. He stated that the Landlord did not attempt to remove the Tenant from the site by serving a One Month Notice to End Tenancy for Cause because the Landlord did not believe the *Residential Tenancy Act* applied to this living arrangement.

The Landlord stated that:

- the Tenant rebuilt the structure on the deck of his site;
- the size of the structure exceeds the size allowed by local bylaws;
- the structure built by the Tenant has glass doors and locks, which are not permitted by local bylaws;
- the Tenant built a fence that encroaches on common property;
- the Tenant used cement to secure the fence posts, which is not allowed; and
- the Tenant refused numerous requests to alter the fence and deck structure.

The Tenant stated that he requested and received permission to replace the structure on the deck of his site and that he replaced it with a similar sized structure. He stated that he requested permission because he wished to ensure he was allowed to replace the structure. He defined the request as a “courtesy” but he stated he would not have rebuilt the structure if permission had been denied.

Analysis

I favor the testimony of the Tenant, who declared that rent was \$525.00 per month, because his testimony in this regard was consistent throughout the proceedings. I find his testimony in this regard was more reliable than the Landlord’s testimony, as the Landlord’s testimony was inconsistent. She initially testified that the summer rent rate was \$525.00 and she later testified it was \$540.00. Similarly, the Landlord initially testified that the winter rent rate was \$505.00 and she later testified it was \$520.00.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 21(1) of the *Manufactured Home Park Tenancy Act (Act)* stipulates that a landlord must not terminate or restrict a service or facility if:

- (a) the service or facility is essential to the tenant's use of the manufactured home site as a site for a manufactured home, or
- (b) providing the service or facility is a material term of the tenancy agreement.

Section 21(2) of the *Act* stipulates that a landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

- (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and
- (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

On the basis of the undisputed evidence, I find that hydro service was provided to the site as a term of the tenancy and that the Tenant was required to pay the cost of hydro consumption.

On the basis of the undisputed evidence, I find that on January 28, 2022 or January 29, 2022 the Landlord terminated hydro service to the site. As hydro service is clearly a service that is essential to the use of the site, I find that the Landlord breached section 21(1) of the *Act* when the service was terminated.

I find it is not necessary for me to determine whether water service to the site was also intentionally terminated in January of 2022. Even if water service was not terminated, I find that the Tenant could not reasonably be expected to occupy the site without hydro service.

In adjudicating this claim I have placed no weight on the Landlord's submission that the Tenant could have used a generator to provide power to the rental unit. Not only did the Tenant not own a generator, using a generator as a power source is not a reasonable method of providing power on a long-term basis.

Section 60 of the *Act* authorizes me to order a landlord to pay compensation to a tenant if the tenant suffers damage or loss as a result of the landlord not complying with this *Act*, the Regulations, or a tenancy agreement.

On the basis of the testimony of the Tenant and in the absence of evidence to the contrary, I find that food stored in refrigerator/freezer spoiled as a result of the Landlord terminating the hydro service. I therefore find that the Tenant is entitled to compensation for that loss, pursuant to section 60 of the *Act*.

Typically, a party claiming compensation for loss is expected to submit proof of the amount of their loss. I find that providing proof of the cost of lost groceries is often difficult, as many people do not keep receipts for groceries. I therefore find it reasonable, in these circumstances, to accept the Tenant's estimate of the value of the groceries lost as a result of the hydro being terminated.

In these circumstances, the Tenant has provided two estimates of the value of his lost groceries. I find the most reliable estimate is the \$300.00 estimate that was made on February 11, 2022 and I grant compensation in that amount. I find this estimate to be more reliable as it was made a few months after the loss was experienced. I find that the estimate made on April 07, 2022 is less reliable, as memories typically fade with time.

I find that the Tenant's explanation that the claim of \$300.00 did not include a claim for food that was stored in the freezer is not credible. I find it not credible because on the monetary worksheet dated February 11, 2022, the claim specifically declares that it relates to "food in refrigerator and freezer".

In adjudicating the claim for lost groceries, I have placed little weight on the Manager's testimony that all refrigerators in recreational vehicles are capable of being powered with propane. While I accept that she is familiar with recreational vehicles due to her past employment, I find her testimony is insufficient to refute the Tenant's testimony that his refrigerator did not operate on propane. As the Manager is not familiar with the refrigerator in the Tenant's unit, I find that the Tenant's evidence is more reliable.

On the basis of the evidence that shows the Tenant rented a hotel room on January 29, 2022, I find it reasonable to conclude that the Tenant stopped living on the site on January 29, 2022.

On the basis of the testimony of the Tenant and in the absence of evidence to the contrary, I find that the Tenant resided in hotels for several months after he vacated the rental site. I find that he would likely not have incurred this expense if the Landlord had not terminated the hydro service. A tenant would typically be entitled to some compensation for staying in hotels, pursuant to section 60 of the *Act*, providing the tenant properly mitigated their losses.

Section 7(2) of the *Act* stipulates, in part, that a tenant who claims compensation for damage or loss that results from a landlord's non-compliance with the *Act*, the regulations, or their tenancy agreement, must do whatever is reasonable to minimize the damage or loss. In these circumstances, I find that the Tenant had an obligation to mitigate his losses by find an alternate site for his unit and/or by finding alternate accommodation in a timely manner.

Given the urgency of the need to find immediate accommodations, I find it was reasonable that the Tenant stayed in a hotel for one week after his hydro service was terminated. I therefore find that the Tenant is entitled to compensation for the cost of those hotels. On the basis of the receipts submitted in evidence, I find that the Tenant incurred hotels costs of \$1,323.61 for the period between January 29, 2022 to February 04, 2022, and I grant him compensation for those costs.

I find that one week was a reasonable amount of time to find an alternate site for his living unit. I find that the Tenant has failed to demonstrate that he made reasonable efforts to find an alternate site for his living unit after February 04, 2022. I therefore find that the Tenant is not entitled to compensation for hotel costs incurred after February 04, 2022, as he failed to establish that he properly mitigated his losses.

In determining that the Tenant failed to establish that he properly mitigated his losses, I find that the Tenant submitted no evidence to corroborate his testimony that he made several efforts to find an alternate site for his living unit and that he was unable to find a campsite suitable for his unit. I find that his testimony in this regard is directly contradicted by the testimony of both the Manager and the former Manager, both of whom stated that they spoke with representatives of other campgrounds in the area, who informed them that sites for trailers were available in January of 2022 and that there are still sites available.

I find that the testimony of the Witnesses with the initials "MJ", "RL", "QL" and "MM", clearly establishes that sites were available in communities that were reasonably close to this site. I am therefore satisfied that the Tenant could have found an alternate site with reasonable effort, albeit with increased rental rates.

Given the urgency of the need to find immediate accommodations, I find it reasonable that the Tenant ate in restaurants for the period between January 29 and February 04, 2022. I therefore find that the Tenant is entitled to compensation for the cost of those meals.

In addition to establishing that the Tenant suffered a loss, the Tenant is required to accurately establish the amount of the loss. I find that the Tenant has failed to establish the true cost of his meals for the period between January 29 to February 04, 2022. In reaching this conclusion, I was heavily influenced by the absence of any documentary evidence, such as receipts, that establishes the cost of those meals. When receipts are available, or should be available with reasonable diligence, I find that a party seeking compensation for those expenses has a duty to present the receipts. As the Tenant has failed to establish the true amount of his meal costs, I dismiss his claim for such compensation.

In adjudicating this matter, I have placed no weight on the Tenant's submission that the CRA guidelines establish the cost of meal that can be claimed. I find this guideline relates to tax deductions and does not establish the actual loss experienced by the Tenant.

I find that the Tenant has failed to demonstrate that he made reasonable efforts to find an alternate site for his living unit after February 04, 2022. I therefore find that the Tenant is not entitled to compensation for food costs incurred after February 04, 2022, as he failed to properly mitigate his losses.

I find that the Tenant submitted insufficient evidence to support his claim that he paid for cable service during the tenancy. In reaching this conclusion I was influenced, in part, by the Manager's testimony that cable service is provided to occupants of the park. I was further influenced by the absence of any documentary evidence, such as a cable bill, that corroborates the Tenant's testimony that he paid for cable service.

As the Tenant has submitted insufficient evidence to establish that he paid for cable service during the tenancy, I dismiss his claim for compensation for the cost of those services.

I respectfully disagree with the Landlord's submission that since the Tenant has not paid rent for leaving his trailer on the site, the lost income the Landlord experienced should offset any compensation awarded to the Tenant. These proceedings relate to a claim for compensation by the Tenant and that is the issue to be determined. In the event the Landlord believes the Tenant owes compensation to the Landlord for unpaid rent or damage to the site, the Landlord retains the right to file an Application for Dispute Resolution.

I have placed no weight on the Landlord's allegation that the Tenant pushed her on January 29, 2022. Even if I concluded that the allegation was true, I cannot conclude that the Landlord had the right to terminate hydro service at the site. In circumstances where a landlord has safety concerns relating to the behavior of a tenant, the appropriate response is to end the tenancy pursuant to section 40 or 49 of the *Act*.

As the issue of whether or not the Tenant pushed the Landlord on January 29, 2022 is not relevant to my decision, it is not necessary for me to determine if the Tenant pushed the Landlord.

I respectfully disagree with the Landlord's submission that the Tenant's violation of park rules should be considered when determining whether compensation is due to the Tenant.

Even if I concluded that the Tenant seriously violated park rules, the Landlord would not have the right to terminate hydro service to the site. In circumstances where a tenant violates park rules or builds structures that are not permitted, the appropriate response is to end the tenancy pursuant to section 40 or 49 of the *Act*.

As the issue of whether or not the Tenant violated park rules is not relevant to my decision, it is not necessary for me to determine if the Tenant violated park rules when he built a fence or replaced a structure on his deck.

While I accept the Landlord's submission that the Landlord did not know the *Act* applied to this living arrangement and that the tenancy could be ended by serving a One Month Notice to End Tenancy for Cause, I cannot conclude that this negated the Landlord's obligation to comply with the *Act*. In my view, it would have been prudent for the Landlord to seek legal advice prior to terminating the hydro service.

Conclusion

The Tenant has established a monetary claim of \$1,623.61, which includes \$300.00 in compensation for food that was destroyed after his hydro service was terminated and \$1,323.61 for staying hotels for one week after the hydro service was terminated. I therefore grant the Tenant a monetary Order for \$1,623.61. In the event the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, filed with

the Province of British Columbia Small Claims Court, and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: April 11, 2023

Residential Tenancy Branch