



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNLC, MNRT, MNDCT, RP, AS, OLC, FFT**

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the *Manufacture Home Park Tenancy Act* (the “Act”) to cancel a 12 Month Notice to End Tenancy for Conversion of the Manufactured Home Park, to be paid back the cost of emergency repairs, for compensation for monetary loss or other money owed, to have the landlord make repairs to the site or property, to be allowed to assign or sublet and the landlord’s permission has been unreasonably withheld, to have the landlord comply with the Act, and to recover the cost of the filing fee.

Only the tenant appeared at the hearing. As the landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The tenant testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on December 8, 2022. a Canada post tracking number was provided as evidence of service, the landlord did not appear.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the landlord has been duly served in accordance with the Act.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. While I am prepared to consider the tenants claim that relates the 12 Month Notice and the matters relating the septic system failure.

I am not prepared to hear or considered the tenant's claim for loss of rental income from when they were acting as a landlord and subletting the rental unit or to hear the tenant's request to sublet as I do not believe they are directly related to the other issues.

Firstly, the issue of loss of rental income may be outside the jurisdiction of the Residential Tenancy Branch as this would be an issue between the tenant acting in their role as a landlord and the landlord. The Act does not allow issues between landlords or issues between tenants to be considered. I make no finding on this matter. Therefore, I grant the tenant leave to reapply.

Secondly, I am not prepared to consider the tenant's request to sublet. This is unrelated and, in any event, may be premature as currently there is no septic field, and it may be that if the septic field is determined not to be replaceable then the tenancy could be impacted. Therefore, I grant the tenant leave to reapply.

Issue(s) to be Decided

- Should the 12 Month Notice be cancelled?
- Should the landlord be ordered to make repairs?
- Is the tenant entitled to recover the cost of emergency repairs?

Background and Evidence

The tenant testified that they were served with the 12 Month Notice on November 24, 2022. The tenant stated that the Manufacture Home Park is not being converted. The tenant stated that the landlord just wants to bring in their own manufactured homes and rent them out. The tenant stated that they are the last site that has their own manufactured home.

The tenant testified that they do not live in the manufactured home and that they were subleasing the premises, although they did not have the landlord's written consent to do so. The tenant stated that their subtenant had to vacate because the septic field for their site and one other site failed. The tenant stated that the landlord has failed to make the repairs as required by the health department order. The tenant seeks to have the landlord ordered to make the repairs. Filed in evidence sewer system order dated September 26, 2022.

The tenant testified that they should not have to pay the site rent until such time as the landlord complies with the health order because it is unlivable without a sewage system. The tenant stated that they seek to recover site rent of \$220.00 for the six months listed in the application in the amount of \$1,320.00. The tenant stated that this should be an ongoing rent reduction.

The tenant testified that when the septic field first failed on September 2, 2022, they contacted the landlord, and they were told to bring in a plumber for the emergency repairs and they would be reimbursed for the plumbing invoice, and it was the plumber who identified that the septic system had failed. The tenant seeks to recover the amount of \$369.90. Filed in evidence is an t.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, the onus was on the landlord to prove the 12 Month Notice. As the landlord failed to attend the hearing or submit any evidence. I find the landlord has not met the burden of proof. Therefore, I grant the tenant's application to cancel the 12 Month Notice.

I am not prepared to order the landlord to replace the septic system. The order given by the health department stated that the area is protected by the Heritage Conservation Act, and any construction would require the issuance of permit under the Heritage Act. Therefore, I find this outside of my jurisdiction to order such repair as it may be that the Heritage Act denies the permit, and this could impact the tenancy if there is no other viable option such as a city sewer system to dispose of the sewer on a permanent basis.

However, the order required the landlord to supply to the tenant a temporary means of sewage disposal by October 1, 2022, which the tenant stated this was not done. As an order has already been made by the health department. I can only confirm that the landlord must comply with the requirements of this order forthwith. The landlord is cautioned that failure to comply with the government order could have serious consequences.

I accept the evidence of the tenant that the premises is unusable until a least a temporary means of a sewage disposal is installed. I find it reasonable that the tenant

be entitled to recover the site rent of \$220.00, as requested in their application in the amount of **\$1,320.00**. I have not granted an ongoing rent reduction as this was not specified in the application.

I am satisfied that the tenant had a plumber attend when the septic system failed. While tenants are -not to make emergency repairs unless the met the criteria of the Act. However, I accept the tenant's evidence that the landlord instructed the tenant to call a plumber and that they would be reimbursed for the cost, which was reasonable. Therefore, I grant the tenant the cost of the emergency repair in the amount of **\$396.90**.

As the tenant has been successful with the above items, I grant the tenant the cost of **\$100.00** to recover the cost of their filing fee.

I find the tenant has established a total monetary claim of **\$1,816.90** comprised of the above amounts. This Order may be filed in the Provincial Court (Small Claims) and enforced as an order of the court. The **landlord is cautioned** that costs of such enforcement are recoverable from the landlord.

Conclusion

The tenant's application to cancel the 12-month Notice is granted. The landlord must comply with the order of the health department by providing the tenant with a temporary means of sewage disposal forthwith. The tenant is entitled to recover the cost of the site rent as indicated in their application, emergency repair costs and 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: April 17, 2023

Residential Tenancy Branch