Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, MNDCT, LRE, OLC, FFT

Introduction

On October 26, 2022, the Tenant made an Application for a Dispute Resolution Proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the "Notice") pursuant to Section 40 of the *Manufactured Home Park Tenancy Act* (the "*Act*"), seeking a Monetary Order for compensation pursuant to Section 60 of the *Act*, seeking to restrict the Landlord's right to enter pursuant to Section 63 of the *Act*, seeking an Order to comply pursuant to Section 55 of the *Act*, and seeking to recover the filing fee pursuant to Section 65 of the *Act*.

On November 9, 2022, this Application was set down for a hearing on March 3, 2023, at 1:30 PM. This Application was then adjourned pursuant to an Interim Decision dated March 4, 2023, and was set down for a reconvened hearing on June 19, 2023, at 11:00 AM. This matter was adjourned again pursuant to an Interim Decision dated June 19, 2023, and was then set down for a final, reconvened hearing on October 6, 2023, at 1:30 PM.

The Tenant attended the final, reconvened hearing; however, the Landlord did not attend at any point during the 19-minute teleconference. At the outset of the hearing, I informed the Tenant that recording of the hearing was prohibited, and she was reminded to refrain from doing so. As well, she provided a solemn affirmation.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the Application, with or without leave to re-apply.

I dialed into the teleconference at 1:30 PM and monitored the teleconference until 1:49 PM. Only the Tenant dialed into the teleconference during this time. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenant was the only other person who had called into this teleconference.

Service of documents was discussed at the original hearing, and was confirmed by all parties. The Landlord acknowledged that he did not submit any documentary evidence for consideration. Based on this, the only evidence that was submitted, being that of the Tenant, will be accepted and considered when rendering this Decision.

Moreover, as the parties agreed that the Tenant gave up vacant possession of the site on or around November 15, 2022, the only claims that would be addressed in the Tenant's Application related to those of monetary compensation.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order for compensation?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on or around September 1, 2022, and that the tenancy ended on or around November 15, 2022. Rent was established at an amount of $600.00 per month and was due on the first day of each month. A copy of the signed tenancy agreement was not submitted as documentary evidence for consideration as one was not created by the Landlord, which is contrary to the *Act*.

At the original hearing, the Tenant advised that she was seeking compensation in the amount of **$257.94** because she had a discussion with the Landlord regarding landscaping of the site. She testified that she showed the Landlord the diagram of the landscaping plan on September 2, 2022, and that he approved it. She stated that she purchased ties and re-bar for the approved work at a cost of $257.94, and that she paid for the labour. Given that she was served notice to end her tenancy, she is requesting the cost of these materials back. She referenced the documentary evidence submitted to support this claim.

The Landlord initially did not make any submissions with respect to this claim. However, he then confirmed that the Tenant showed him the diagram of the landscaping plan. He stated that the Tenant was paying for this, and that he was fine with these updates suggested by the Tenant.

The Tenant then advised that she was seeking compensation in the amount of **$489.79** for the cost a certain type of plumbing connection as she was to be a long-term tenant. She stated that these were special connections to ensure that there would be no plugs in the plumbing. She testified that the Landlord gave her permission to do this work, and this was similar to what other residents in the park had done. She referenced the invoice submitted to support the cost of this claim.

Again, the Landlord initially did not make any submissions with respect to this claim. However, he then testified that the Tenant did not bring this to his attention, and he did not know of these extra plumbing purchases. He stated that the site had the proper requirements for habitability.

Prior to this original hearing being adjourned, the Landlord brought up the idea that there was an issue with jurisdiction; however, he was not sure, and he could not provide any submissions why it was his belief that this tenancy did not fall under the purview of the *Act*.

At the reconvened hearing of June 19, 2023, the Tenant advised that she was seeking compensation in the amounts of **$111.37**, **$423.36**, **$37.18**, **$277.35**, and **$520.00** because the landscaping plan and lot plan were presented to the Landlord on September 2, 2022, and he approved of them on September 3, 2022. She testified that the Landlord was provided with the sample skirting as well, and she subsequently purchased the skirting materials. She stated that she hired a handy person to conduct this work, and on October 14, 2022, the Landlord yelled at this person in an effort to get

them to stop this work. She submitted that the Landlord served her with a letter that day, giving her two days to remove the skirting. She acknowledged that she did not have written authorization to install this skirting, but she did obtain his verbal permission.

She testified that the laying of the foundation for a shed started on September 5, 2022, that the Landlord viewed this on September 18, 2022, that he had no issue with this shed, and that he wished that all residents of the park would do the same. She advised that she informed the Landlord that workers would be attending the site on September 28, 2022, to install the skirting and he stated that he was fine with this. She stated that the Landlord called a meeting on September 28, 2022, with all the permanent residents of the park, and he gave them the park rules then. She confirmed that the Landlord never gave her these rules when the tenancy started.

She advised that her husband told the Landlord that a contractor would return on October 12, 2022, to install skirting, and the Landlord agreed to a particular type of material. She stated that he saw the plywood skirting on October 3, 2022, and asked the Tenant to come to the office. She noted that he told her that he preferred a different type of skirting material on October 4, 2022. She referenced all her documentary evidence submitted to support these claims.

The Landlord advised that the park rules were provided to the Tenant at some point prior to September 28, 2022, but he was not sure when this was, other than it was before the Tenant commenced the work. He confirmed that the only projects approved were the landscaping and the shed, and while he was not sure of when this was approved, he guessed that it was on September 18, 2022. He stated that he saw the shed and the landscaping for the first time on or around September 27, 2022. It is his belief that the Tenant sees other residents of the park have something, so she wants that as well.

He stated that he approved vinyl skirting verbally, but saw the plywood on the site on or around September 30, 2022, and told the Tenant’s husband that this could not be installed. He advised that this material was being installed about a week later, which prompted the October meeting. He confirmed that he had a meeting with the Tenant on October 9, 2022, about the skirting and he told her that wooden skirting is not permitted. He stated that she told him that she may have misunderstood that plywood is not good due to the risk of rodents.

The Tenant refuted meeting with the Landlord on October 9, 2022. As well, she stated that the approved vinyl could have been installed over the plywood.

The Landlord submitted that the Tenant's main goal was to install plywood skirting.

The Tenant advised that she was seeking compensation in the amount of **$778.41** because other residents of the park had propane installed on their sites, and she did not realize that she required approval for this. She stated that this was not included in the park rules, and she was never told she could not have this on her site. She testified that she brought in this tank on October 4, 2022, and the Landlord gave her a letter on October 14, 2022, telling her to remove it. She submitted the invoice to support the cost of this installation.

The Landlord advised that other residents who had these tanks on their site had them prior to the Tenant's tenancy starting. He testified that she had the tank placed on the road in front of the site, and she asked him where he would like it placed. He stated that he told her to install it in the back of the site, but she told him that that would be too costly.

The Tenant stated that she explained to the Landlord that the gas company would not put the propane tank in the back of the site because it was illegal to do so.

At the final, reconvened hearing, the Tenant advised that she was seeking compensation in the amount of **$1,209.59** because of the shed that they constructed on the site. She referenced the park rule which indicated that any structures must be approved by the park, and she stated that the Landlord specified what type of shed they could construct on September 3, 2022. She submitted that the shed construction was initiated on September 5, 2022, and was completed on September 16, 2022. She testified that the Landlord was happy with the shed and that he liked the look of it; however, she advised that he then sent her a letter dated October 14, 2022, indicating that all the changes the Tenant made on the site needed to be disposed of. She referenced the invoice submitted to support the cost of the shed.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the

following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Regarding the Landlord's suggestion at the original hearing raising the issue of jurisdiction, I note that he did not submit any documentary evidence for why the *Act* did not apply to this tenancy. Furthermore, given that he elected to serve the Tenant with a One Month Notice to End Tenancy for Cause (the "Notice"), it makes little sense for him to have served this Notice if it was his belief that there was no jurisdiction of the *Act* with respect to this tenancy. As such, I am satisfied that the *Act* does have jurisdiction over this tenancy, and the resultant Decision will be outlined below.

Section 26 of the *Act* requires that the Landlord provide and maintain the manufactured home park in a reasonable state of repair that complies with the health, housing and safety standards required by law. As well, the Tenant must repair any damage to the site that is caused by their negligence.

Section 60 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

With respect to the Tenant's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

As noted above, the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Landlord fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Tenant prove the amount of or value of the damage or loss?
- Did the Tenant act reasonably to minimize that damage or loss?

Regarding the Tenant's claim for compensation in the amount of $257.94 for the cost of landscaping, I note that the Landlord did acknowledge that he approved this project. However, I also note that the Landlord served the Notice, and while it was disputed by the Tenant, she elected to vacate the rental unit prior to the scheduled hearing, which would have determined the status of the tenancy. There was no requirement for the Tenant to have vacated, and she could have remained on the site until the scheduled hearing. As such, she could have enjoyed the benefit of this improved landscaping until then. Conversely, I note that the Landlord did not comply with the *Act* by creating a written tenancy agreement at the start of the tenancy, and it was entirely evident that he knew little of his rights and responsibilities as a Landlord under the *Act*. Given that he did not create a written tenancy agreement, I find it extremely unlikely that he provided a copy of the park rules to the Tenant at the start of the tenancy. As I am satisfied that both parties bear some negligence for how this tenancy transpired, I find it appropriate to grant the Tenant a monetary award in the amount of **$128.97** as they are both culpable for this dysfunctional tenancy.

With respect to the Tenant's claim for compensation in the amount of $489.79 for the cost of the specific plumbing connection for the site, I note that the park rules indicate that any changes to the site need prior approval. While I do not find that the Tenant was provided with the rules at the start of the tenancy, I find it consistent with common sense and ordinary human experience that the Tenant would not be permitted to make changes to the site without consent from the Landlord. While the Tenant claimed to have the Landlord's permission, he refuted this. Had the Tenant truly had permission to undertake this work, the Tenant should have had this documented in writing to protect herself. Without any evidence corroborating that the Tenant had the Landlord's consent to make these changes, I dismiss this claim in its entirety.

Regarding the Tenant's claims for compensation in the amounts of $111.37, $423.36, $37.18, $277.35, and $520.00 for the cost of skirting materials, the consistent and undisputed evidence is that the Landlord, at some point, verbally agreed that the Tenant could skirt the manufactured home. However, there is a dispute over what materials the Landlord allegedly permitted to be used. As noted above, should there be an agreement, the parties should have documented this in writing so there would be no dispute. As the burden on this Application rests with the Tenant, I am satisfied that she would be required to prove that the Landlord agreed for her to install plywood skirting that she painted herself. Conversely, I note that the Landlord cared little for documenting any of this tenancy in writing, and as noted above, I find it probable that the first time the Landlord likely provided a copy of the park rules to the Tenant was on

September 28, 2022. As it is evident that there was some sort of agreement regarding skirting, and as it is clear that both parties failed to document the specifics of this agreement in writing, I am satisfied that both parties are negligent. As such, I find it appropriate to grant the Tenant a monetary award in the amount of **$684.63** to satisfy this claim.

With respect to the Tenant's claim for compensation in the amount of $778.41 for the cost of the propane tank installation, given that she acknowledged that she did not realize that she required the Landlord's approval for this, I dismiss this claim without leave to reapply.

Finally, regarding the Tenant's claim for compensation in the amount of $1,209.59 for the cost of the shed, I note that the Landlord acknowledged in an earlier hearing that he approved the shed. However, I again reiterate that the Tenant elected to dispute the Notice but then she vacated the site prior to the scheduled hearing, which would have determined the status of the tenancy. Furthermore, the Tenant could have taken this shed with her upon leaving. Despite this, given that the Landlord has demonstrated mismanagement of this tenancy in contradiction with the *Act*, I also find him negligent for the unsuccessful manner with which this tenancy developed. As I am satisfied that both parties bear some responsibility in this matter, I find it appropriate to grant the Tenant a monetary award in the amount of **$604.80** to satisfy this claim.

As the Tenant was partially successful in these claims, I find that the Tenant is entitled to recover the $100.00 filing fee paid for this Application.

Pursuant to Sections 60 and 65 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenant

Landscaping	$128.97
Skirting	$684.63
Shed	$604.80
Filing fee	$100.00
TOTAL MONETARY AWARD	**$1,518.40**

Conclusion

The Tenant is provided with a Monetary Order in the amount of **$1,518.40** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 *Manufactured Home Park Tenancy Act*.

Dated: November 2, 2023

Residential Tenancy Branch