

DECISION AND ORDERS

Dispute Codes OLC, ERP, RP, PSF, O, FF

Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution under the *Manufactured Home Park Tenancy Act*, seeking orders to have the Landlord comply with the Act, make emergency repairs to the site for health or safety reasons, make repairs to the site, provide services or facilities required by law, and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

One witness, called by the Landlord, gave affirmed testimony based on his experience and expertise in the relevant business.

I note the style of cause of the Application has been amended in order to include the personal name of the Landlord, and to remove the personal name of the Agent for the Landlord.

Issues(s) to be Decided

Are the Tenants entitled to the relief sought in their Application?

Background and Evidence

The Tenants have lived in the park for approximately 13 years. The Landlord became the new owner of the park in approximately late 2007.

On September 4, 2009, the septic system servicing the site, which the Tenants rent from the Landlord, ceased to function correctly. The Tenants contacted the Landlord's Agent and were told that no work could be performed on the septic system until after the long weekend.

The Tenants contacted the local health authority to report the septic problem, but again partially due to the long weekend, no one from the health authority could visit the site for an inspection until September 15, 2009. At the time of that inspection the septic system was no longer bubbling discharge to the surface, and the local health authority did not issue any orders.

In contact with the Agent for the Landlord, the Tenants were told nothing would be done to repair the system.

The Landlord and his Agent gave testimony throughout the hearing that it was not economically reasonable to do the repairs to the septic system servicing this site, or any other site in the park.

There are apparently 14 sites in the park, and 12 are currently occupied.

The Landlord and Agent testified that the income from all the sites does not generate enough income to justify the \$20,000.00 to \$25,000.00 it would cost to repair or replace the septic system. Furthermore, the sewage dump fees charged by the municipal authority have increased, as there is now an improved municipal sewer system and less use of the sewage dumping facility.

The Landlord alleged that they had offered the Tenants a compromise to resolve the situation, which consisted of offering the Tenants 6 months or one year free pad rent.

The Tenants explained that currently they pay no pad rent, in exchange for doing caretaking and grounds keeping in the park.

At another point in the hearing, the Landlord alleged that the sewer problems may have been due to the negligence of the Tenants at the site, or by the renters at the site adjoining the subject site.

The Tenants denied any negligence and explained that the occupants of the adjoining site had used improper laundry soap, and or, may have disposed unsuitable items in the sewer system. The Tenants also explained that the adjoining site used to house a number of "party people", where the extra people present may have over used the system.

The Landlord provided a witness, who is employed by a local company which services septic and sewer systems in the area. The Witness explained his qualifications and experience in the business, and in particular, his long term of providing services to the subject park.

The Witness testified that there could be a number of factors that led to the failure of the sewer system. These were identified as improper soap being used, leaky toilets discharging water constantly to the septic system, age of the system, problems with the drywell portion of the system, disposal of improper items into the system, too many people using the system, and the recent removal of trees on land adjacent to the park. He reiterated several times that there were many factors which could have led to the system failure.

The Tenants explained they have lived in the park for years and really enjoy it. They do not wish to move. They have spent money improving their manufactured home and find

the home to be attractive and well kept. They also explained that the Landlord, shortly after purchasing it, attempted to give the Tenants and other occupants a one year Notice to End Tenancy, as his intentions were to re-develop the property.

The Agent for the Landlord testified that these Notices to End Tenancy were withdrawn, as the Landlord had obtained no permits to proceed as intended.

The Landlord acknowledged that the whole park is deteriorating and although when he purchased it he thought it would be a viable opportunity, it had turned out to be a bad investment.

Analysis

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

The Landlord is hereby ordered to repair or replace the septic system servicing the subject site. The Landlord is further ordered to proceed with the repairs on an urgent, emergency basis.

Under section 26 of the Act, the Landlord is required to provide and maintain the park in a reasonable state of repair and comply with housing, health and safety standards required by law. Section 27 of the Act holds that sewer repairs are considered an emergency. These are items that must be dealt with quickly by the Landlord.

Furthermore, under section 21 of the Act, the Landlord must not terminate or restrict a service or facility that is essential to use of the site as a manufactured home site. This clearly includes septic or sewer systems in the park.

I find that to allow a septic system to fail is a serious breach of these portions of the Act.

I draw attention to the fact that to intentionally neglect, or refuse to repair or replace, the septic system under this **Order** may also expose the Landlord to administrative penalties under the Act, should the Tenants wish to pursue these.

I also draw attention to the fact that these penalties have the potential to quickly exceed the cost of repairing the septic system.

I further note that the legislation does not have provisions to excuse a party from performing the duties and obligations imposed under the Act or tenancy agreement, based on economic viability. For example, in other circumstances, renters may not claim they have financial difficulties as an excuse to cease paying rent. Based on the legislation, I find the Landlord's economic argument must fail.

I also find there was insufficient evidence to prove the Tenants had been negligent in any manner in this issue.

The Landlord is in the business of running the park and must do so in accordance with the legislation. It is not the fault of the Tenants or other occupants of the park that the Landlord made an unwise business decision. The Landlord must still abide by the obligations and duties imposed under the legislation and provide the Tenants with this service or facility as it is essential to their use of the site.

Regardless of whether the Landlord intends to eventually close the park or re-develop it, he still must do so in accordance with the Act and in a planned manner with compensation to these Tenants and the others in the park. He certainly is not able to end the tenancies for cause based on him choosing to not repair the septic field.

Furthermore, even if he were to properly initiate the process of closing or redeveloping the park, the Landlord is still obligated during the intervening time to provide septic and sewage services to the Tenants and other home sites.

The Tenants have leave to apply for monetary compensation under the Act if the Landlord does not comply with this order on an emergency basis.

The Landlord must pay the Tenants **\$50.00** for the cost of this Application.

Conclusion

The Landlord is ordered to repair or replace the septic system to the subject site.

Economic viability does not provide an exemption from the legislation for the Landlord.

If the Landlord does not act quickly to comply with the above Orders, the Tenants have leave to apply for economic compensation in accordance with the Act.

The Landlord is also cautioned about administrative penalties, should the Tenants pursue this course of action.

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

Dated: October 02, 2009.

Dispute Resolution Officer