

## **DECISION AND ORDERS**

Dispute Codes      ERP, MNDC, MNR, OLC, RP, RR, FF

### Introduction

These two hearings dealt with the Tenant's Application for Dispute Resolution, seeking monetary orders for the cost of emergency repairs, money owed or compensation under the Act or tenancy agreement and for a rent reduction; and orders for the Landlord to comply with the Act, to make emergency repairs or other repairs to the site, 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.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note the first hearing in this matter, on February 24, 2010, was adjourned, and the final hearing in this matter was held on April 14, 2010.

### Issue(s) to be Decided

Is the Tenant entitled to the relief she has sought in her Application?

### Background and Evidence

The Tenant's manufactured home park tenancy began in 2004, with the current Landlord taking over the park in or about August of 2005.

The Tenant claims that her yard began being flooded with water in June of 2006, following some development of adjacent rental sites by the Landlord.

The Tenant claims the Landlord visited the site in the summer of 2006 to view the flooding. They had a discussion about a catch basin being installed, however, nothing further was done by the Landlord.

Over the next few years the flooding continued to varying degrees, depending on the frequency and amount of rain fall. In the early months of 2009, the flooding continued and the water on the property did not drain as quickly as it had before. The Tenant purchased and installed a small pump to move the water away from the rental site.

In the fall of 2009, the rain was heavy and the Tenant's pump could not keep up to the amount of water flooding the site. She used a larger pump, which had a capacity of 35 gallons of water per minute, and a long hose to pump the water into a storm drain some distance away from the site. The Tenant claims it took three days to pump all the water out of the yard.

In November of 2009, the Tenant spoke with an Agent for the Landlord who manages the park. The Agent informed the Tenant she should put her complaint in writing to the Landlord. On November 22, 2009, the Tenant phoned the Landlord and left a message and then wrote to the Landlord and sent video pictures of the flooding via email. The Tenant did not receive a response to the request for the Landlord to do something about the flooding.

On January 1, 2010, the Tenant provided the Landlord with post dated rent cheques and another copy of the November 22, 2009, request that the flooding be repaired.

The Tenant wrote to the Landlord again on January 5, 2010, asking something be done about the flooding. On January 15, 2010, an Agent for the Landlord wrote to the Tenant and informed her the flooding was being "diagnosed professionally". After the Tenant wrote about this again to the Landlord on January 18, 2010, she was informed the matter would be reviewed further. The Tenant filed her Application around this time.

Following the first hearing, the Landlord had a company investigate the cause of the flooding. The Tenant and the Landlord agree that the repairs were completed on April 9, 2010, and therefore, the Tenant is no longer requesting orders for the Landlord to make repairs.

The Tenant is claiming \$214.00 for the cost of the pump, \$1,978.40 for repairs to her unit, fence, deck posts, lawn and landscaping, \$125.00 for cost of home inspection, \$2,000.00 for loss of quiet enjoyment, a reduction of rent in the amount of \$1,615.00, \$500.00 for cleaning and power washing algae, and \$100.00 for the recovery of the filing fee for the Application.

The Landlord's Agent testified at the hearing and produced a report that on March 7, 2010, an inspector used a video pipe camera to examine a drain line which ran along the subject rental site and other sites in the park. The inspector wrote that the drain pipe was blocked and the camera could not pass through. The inspector provided an opinion that the drain line was, "... no longer functioning as intended causing high water levels in the area ...". [Reproduced as written.]

This same inspector later provided a letter to the Landlord explaining what repairs had been made. The letter is undated. It explains, "... it was evident that some previous works had taken place which resulted in several feet of crushed and a totally failed connection between the ... line and the ... standard sewer line." [Reproduced as written.]

The Agent for the Landlord testified that they had water problems everywhere in the park and alleged that there were constant problems with trees and pipes in the park. He also testified that a nearby housing division causes water to drain down into the park. He alleges part of the problem at the rental site is the cedar hedge the Tenant planted. He agreed that the Landlord would pay for the pump purchased by the Tenant but saw no need for a rent reduction or other compensation to the Tenant.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlord has breached section 26 of the Act, by failing to provide and maintain the park in a reasonable state of repair.

I find that the Landlord failed to address the Tenant's request for repairs to stop the flooding in a timely manner. I find the Landlord acted in a high handed manner by not quickly investigating and resolving the obvious flooding issues that were occurring at the Tenant's rental site.

I find the Tenant notified the Landlord of the problems in November of 2009, in accordance with the Act, and the Landlord took no action until after the Tenant had to file her Application. The repairs were not completed until early April of 2010, despite the November 2009 notice given the Landlord.

In reviewing the evidence of the Tenant, in particular her photographs, this was a significant amount of flooding, visibly apparent to anyone who looked at the property during the flooding events. It certainly affected her ability to move around the site, to enter her unit, or vehicle, and to enjoy the site without having to do work the Landlord was obligated to perform.

I further find that the Tenant mitigated her losses as best she could by using the pump and combating the flood waters, keeping her unit clean and tidy, and informing the Landlord about the problems.

I find the Tenant did not contribute in any way to the flooding at the site.

I find the Landlord's breach of the Act and the unjustifiable delays in investigating and making required repairs have caused the Tenant to suffer losses. These losses would have been less, had the Landlord addressed her concerns in a timely fashion, rather than ignoring the situation.

Section 60 of the Act states:

Without limiting the general authority in section 55(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations

or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Therefore, I find the Tenant is entitled to \$214.00 for the cost of the pump, \$1,978.40 for repairs to her unit, fence, deck posts, lawn and landscaping, \$125.00 for the cost of a home inspection and \$500.00 for cleaning and power washing at the site.

I also order that the Tenant's rent of \$354.00 per month during the five month period it took the Landlord to investigate and make the repairs, be reduced to \$154.00 per month, in compensation for loss of quiet enjoyment of the site, and for the work she had to combat the flooding. I find the Tenant is entitled to the return of \$1,000.00 in rent paid, due to the loss of quiet enjoyment of the site.

Therefore, I find that the Tenant has established a total monetary claim of **\$3,917.40** comprised of the above amounts and the \$100.00 fee paid for this application.

The Tenant may deduct the sum of \$3,917.40 from future rent payments.

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: May 5, 2010.

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Dispute Resolution Officer