DECISION

Dispute Codes MNDC, RP, O, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution for a monetary order, for an order to have the landlord make repairs and for an order to disregard a notice from the landlord.

The hearing was conducted via teleconference and was attended by the tenant, the landlords and their witness.

Issues(s) to be Decided

The issues to be decided are whether the tenant is entitled to an order to disregard a notice from the landlord to remove hedge trees; to an order to have the landlord complete repairs; to a monetary order for compensation for loss or damage; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to sections 22, 26, 27, 60, and 65 of the *Manufactured Home Park Tenancy Act (Act).*

Background and Evidence

The tenancy began on February 11, 2006 as a month to month tenancy with a current monthly rent in the amount of $440.00 due on the 1st of the month. These tenants are the first tenants to rent this site and during the development of the site there had been some drainage issues that the then landlord had completed substantial work to minimize.

The tenant submitted a substantial package of documentary evidence including:

- A summary of events and issues;
- A copy of a letter dated April 15, 2010 from the landlord to the tenant advising that because there is a rule that all alterations must have written permission and therefore all evergreen trees planted along the back fence must be removed immediately. The letter also made reference to recent advice from a septic system contractor noting evergreen trees will infiltrate the drainage system;
- Copies of the tenancy agreement, site plans and title search results;
- Copies of email correspondence dating from between March 24, 2010 and May 11, 2010;
- Several photographs of the development of the site; installation of the manufactured home; landscaping; previous flooding; 2009 /2010 flooding; drainage repairs; and other sites in the park;
- Copies of receipts for irrigation dated March 7, 2006 and repairs to the tenant's patio area; and

- Information regarding the specific trees under dispute, including correspondence from experts including an arborist and local nursery owner indicating these particular species and cultivars should not present any problems to drainage systems.

The landlord submitted the following documents:

- A summary of issues and events;
- Copies of an invoice and a field review report from an engineer dated November 21, 2005 confirming the prepared site will support the footings required prior to moving in the manufactured home;
- Copies of invoices from a contractor dated November 10 and 30, 2005 for the work required to prepare the site for occupation;
- A copies of an invoices for the development of a French drainage ditch and additional work on the site dated between April 10, and June 22, 2006;
- A notice dated March 26, 2010 from the landlord to the tenant that the septic system contractor would be on site on March 31, 2010;
- A copy of an undated letter from the septic system contractor advising that evergreen trees on the drainage easement could cause root infiltration; and
- A copy of an email dated May 2, 2010 from a horticulturalist indicating that even though these cultivars are not as aggressive as other trees they will cause a problem.

The tenant testified that there has been minor flooding on the site since the start of the tenancy but it was at its worst in November 2009 and January 2010. In relation to the most recent flooding the tenant testified he sent a letter to the landlord requesting the landlord take action in January 2010.

The tenant acknowledged the landlord acted and had the septic system contractor come in and clear a blocked surface train. The tenant noted the contractor felt he had dealt with the entire problem and that in March 2010 the contractor came back and completed a video scope inspection of the drains that showed a major blockage in the drain running through this tenant's site. Both parties agreed the drainage work has now been completed.

The tenant is seeking compensation for the loss of use of the site for the equivalent of ½ month's rent for each of November 2009, December 2009, and January 2010; ¼ month's rent for April 2010 and 1/8 month's rent for May 2010; for loss of quiet enjoyment in the amount of $2,500.00 for the period of time; and for costs associated with this hearing.
The tenant is also seeking assistance from the landlord to bring in a restoration contractor to investigate mould growing in his shed and determine what remediation is required.

The landlord testified the tenant had planted these trees; laid an irrigation system; and build a shed without express written permission from the landlord as is required under

the tenancy agreement and they are only asking him to remove the trees as the infiltration by roots into the drainage pipe is a potential problem for the whole park.

The landlord's witness, an expert in drainage systems, indicated that in his experience trees planted too close to drainage systems will always cause problems in those systems and he predicts that should these trees be left here he will need to be brought back in 4 to 5 years to remove the roots that will then be blocking the drain.

Both parties had submitted documentary evidence from their own experts with opposing horticultural views regarding these specific trees and subsequent recommendations. Two of the experts indicate they completed an onsite inspection.

Analysis

When a party makes a claim for compensation for damage or loss they must prove they meet a four part test by showing:

1. That a loss or damage exists;
2. The loss or damage results from a violation of the *Act*, regulation or tenancy agreement;
3. What the value of the loss or damage is; and
4. What steps, if any, were taken to mitigate the loss.

I accept, from the evidence provided, there has been minor flooding in the site since the beginning of the tenancy and the both parties agree there was substantial flooding to the site in the November 2009 and January 2010. As a result I find the tenant has suffered a loss in the value of their tenancy.

In relation to the tenant's claim for compensation for each month since November 2009 to May 2010 in the amount of $835.00, I am satisfied the value of the tenancy was reduced in this amount for this period of time.

Section 26 of the *Act* requires the landlord to provide and maintain the manufactured home park in a reasonable state of repair and Section 27 requires the landlord to make emergency repairs within a reasonable time. While there was a delay from the initial blockage removal to the identification of the final repairs, I find this delay to have been made in good faith and based on the expertise of the contractor.

I find that since the tenant formally requested, in writing, the landlord make repairs in January 2010 that the landlord has made the repairs within a reasonable time and made all reasonable attempts to correct the flooding problems as quickly as possible. I therefore find the landlord did not violate the *Act*, regulation or tenancy agreement.

While I have recognized the value of the tenancy was decreased during this period, I find the tenant has failed to prove a loss of quiet enjoyment beyond the restriction in the

use of the property that results from the landlord breaching their responsibilities under the *Act*, regulation or tenancy agreement on the part of the landlord.

In relation to the tenant's request for restoration and remediation services for his shed, the tenant has failed to show that any loss exists. As the tenant has not provided any scientifically documented evidence to substantiate there is a mould problem in the shed, I can make no finding on the existence of a loss or damage. I dismiss this portion of the tenant's application.

I also dismiss the costs associated with the tenant's application, such as registered mail costs stationary supplies, printer ink and paper and photo paper. As the tenant has been partially successful in his claim, I grant the tenant the filing fee for this hearing.

With the repairs to the drainage system complete, the tenant did not specifically address any repairs that were still required to be completed by the landlord; I therefore dismiss this portion of the tenant's application.

And finally, in relation to the removal of the evergreen hedge I find that while the expertise of the drainage/sceptic contractor is limited in his understanding of the root habits of trees I must rely on additional information provided by experts in the appropriate fields.

As both parties have provided written evidence from plant experts with opposing recommendations, I find I am unable to determine whether the tenant should be entitled to keep his evergreen hedge. I do acknowledge the landlord's testimony that he does not want to make the tenant remove any trees that are not necessary to remove and the landlord's offer to provide some privacy screening.

I am convinced that the landlord cannot now use the park rule that requires the tenant to have written permission to make alterations as the landlord has provided the tenant with implied consent by not requesting the removal of the hedge or even the shed and the irrigation system when it was originally installed.

Conclusion

As a result of the above findings, I order the parties to hire a mutually acceptable agrologist or arborist to inspect the specific site and make recommendations, within the next 3 months. The costs are to be borne equally by both parties.

As it is the landlords who have requested to have the trees removed, should they decide to withdraw their notice, there will be no need to complete the above order.

I further order that no trees are to be removed until such time as the report is provided to the parties and the parties agree to any course of action noted by the agrologist or arborist. Should the parties not be able to agree on a course of action based on this report, either party is at liberty to file an Application for Dispute Resolution.

I find that the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **$885.00** comprised of $835.00 compensation and the $50.00 fee paid by the tenant for this application.

This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) 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 *Residential Tenancy Act*.

Dated: June 07, 2010.

Dispute Resolution Officer