

DECISION

Dispute Codes MND, MNDC, RR, O, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord has applied for a monetary order. The tenant has applied for a monetary order.

The hearing was conducted via teleconference over two days (June 21 and June 24, 2010). Both hearings were attended by the tenant and his agent and two representatives of the landlords.

The hearing was originally convened on April 23, 2010 at which time the Dispute Resolution Officer adjourned the hearing as a result of delays in service of evidence through no fault of the applicants/respondents. That hearing was adjourned to the next available hearing time. That decision is documented in the decision provided on April 26, 2010.

The hearing was reconvened on June 21, 2010 at which time both parties were provided an opportunity to present their cases and to respond to each other's presentations and question the other parties. This hearing had to be adjourned due to time constraints but the parties agreed to meet again to ensure both parties had fully presented their cases.

During the first hearing, the tenant requested a summons be issued to have a Project Coordinator from a manufactured home sales company attend and provide testimony regarding observations regarding the site conditions that he had made on a site visit to the dispute address.

In accordance with Residential Tenancy Policy Guideline #15 and upon consideration of the relevance of the testimony the witness could provide and in light of the fact that both parties had submitted geotechnical reports completed by engineers and the tenant had submitted a home inspection report, I found that in the absence of any information on the witness's credentials his testimony would not provide value to these proceedings.

In addition the witness had submitted a written statement that indicated he had been providing the landlord with advice on his own time and not in relation to his role in his employment, as such I compared the importance of the testimony this witness could provide with the inconvenience to the witness. In conjunction with my finding above and Guideline #15, I further found the inconvenience to the witness would outweigh the value of the testimony.

At the hearing on June 21, 2010, the tenant had also requested that an agent of the landlord appear to provide testimony. The landlord agreed to arrange for the agent to

attend. The hearing was reconvened on June 24, 2010 to finalize all presentations and to provide both parties with an opportunity to question each other.

At the outset of this hearing I confirmed that both parties had been informed of my decision to deny the tenant's request to summons the Project Coordinator when they were informed of the reconvened hearing time. Both parties confirmed they were told of the decision and I then explain my reasons as noted above.

The landlord also testified that his agent who was requested to attend was unable to do so due to a medical appointment but that she had offered to respond to any written questions the tenant may have. The tenant's agent rejected this offer and requested an adjournment until such time as the agent could be available.

I was not persuaded by the tenant's agent's argument that written responses to questions the tenant proposed would be insufficient and advised that I will accept written submissions based on questions posed by the tenant and his agent.

The tenant's agent declared that they would no longer provide any presentations or responses to presentations and they would only answer direct questions during the hearing. I advised the tenant's agent that this hearing was their opportunity to present their case and he was able to participate in any manner that he felt was appropriate.

We continued the hearing and the tenant's agent then announced that they would be leaving the call and hung up. The hearing continued with the landlords.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order to have the tenant comply with the *Manufactured Home Park Tenancy Act (Act)*, regulation or tenancy agreement; a monetary order for damage to the site; for compensation for damage or loss under the *Act*, regulation or tenancy agreement and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 26, 55, 60 and 65 of the *Act*.

In addition it must be decided whether the tenant is entitled to an order to reduce rent for repairs, services or facilities agreed upon but not provided; to a monetary order to move his manufactured home and other buildings; for loss of plumbing facilities; for other expenses for this hearing, and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to sections 38, 46, 55, 67, and 72 of the *Act*.

Background and Evidence

The landlord has provided the following documents as evidence:

- Copies of correspondence between the landlord and tenant dating between September 28, 2009 and December 18, 2009;
- Copies of a tenancy agreement signed by the parties on September 23, 2008 for a month to month tenancy a monthly rent in the amount of \$280.00 due on the 1st of the month;
- A copy of a Contract of Purchase and Sale of the manufactured home from the previous owner to this owner dated September 17, 2008, including an addendum that outlines any conditions of the sale such as an inspection report, a property disclosure statement;
- A copy of Park Rules dated July 2009;
- A copy of handwritten notes and photographs taken during inspections of the site dating from August to October 2005;
- Copies of various notes and correspondence relating to the sale of the manufactured home in May 2006 from one owner to the owner that the current owner purchased from;
- A copy of a receipt dated November 9, 2005 for the installation of a catch basin and drain tile under the road in front of the dispute address;
- A summary of the history of sales of this manufactured home since July 2002 including copies of real estate listings for each of the 3 sales and a historic overview of the market in the local area as of December 31, 2008;
- A copy of the Park Utility Plan and Site Plan;
- A copy of a report dated February 2, 2010 on the settlement of the unit site provided by the Senior Geotechnical Engineer with an engineering consulting firm including an invoice for the services in the amount of \$1,589.95;
- A copy of an invoice in the amount of \$359.01 and report from a plumbing contractor showing the drain lines were clear but that the drain for gutters to be plugged; and
- Several photographs of the site and park dating from September 2005 to present.

The tenant has provided the following additional evidentiary documents:

- A copy of an Inspection Report of the site prepared by a home inspector based on an inspection completed on October 26, 2009;
- A copy of a Summary of Geotechnical Site Observations and Conclusions provided by the principal engineer with an engineering consulting firm dated December 15, 2009;
- A real estate listing for a neighbouring site dated December 18, 2009;
- A copy of a print out of zoning bylaws in the local district;
- A copy of a Payor's PAD Agreement dated October 29, 2008;
- A notice from the landlord dated March 20, 2009 regarding water quality and inclusion of a rent increase effective July 1, 2009 and accompanying Notice of Rent Increase – Manufactured Home Site increasing rent to \$290.36 per month;
- A summary of the tenant's financial claim of \$24,764.44 including receipts totalling \$365.91 for costs associated with preparing evidence and filing his Application for Dispute Resolution including the filing fee; \$95.30 for plumbing

supplies; \$1,026.48 for a home inspection and geotechnical reports; and estimates for preparing and moving the tenant's manufactured home in the amount of \$23,276.75;

- An additional summary of a claim for \$250.00 for 39 hours of being unable to use sewers due to a sewer plug from February 17, 2010 to February 18, 2010;
- Resumes for the owners of the manufactured home park;
- A business card of a Project Coordinator for a manufactured home sales company;
- A copy of a written statement dated February 12, 2010 from a former truck driver stating that between 1967 and 1972 he hauled hog fuel from a local mill to this manufactured home park;
- A copy of a hand drawn park plan indicating areas that had been filled with hog fuel; and
- Several photographs of the site and park.

The landlord testified the problems with the site were first noted in 2005 with a previous tenant when an accident caused the downspout on the carport of the site to redirect roof drainage onto the paved carport floor. The landlord notes the home has some downspouts directed into the ground (not the drains) and the slope of the carport floor directs the flow of water under the home, which causes erosion of the ground under the carport and home.

At that time the landlord installed a second catch basin for this site to allow for the tenant to connect her roof drainage to an alternate location. The existing catch basin was not altered and this site now had two catch basins for the tenant's use.

The tenant never did complete attaching her eaves and downspouts to either of the two catch basins or correct the slope that caused water to continue to collect under the home. The manufactured home was then sold in March 2006 to another tenant who received a reduced sales price specifically to repair the carport floor and to repair the foundation. The carport continued to deteriorate but no further action was taken.

In September 2008 the home was sold to the current tenant who, by his agent's testimony, did not have a home inspection completed prior to the sale. The current tenant signed a tenancy agreement with the landlord on September 23, 2008.

The agreement stipulates that the tenant has duly inspected the site and finds the site to be entirely satisfactory for year round living. The agreement also requires the tenant to maintain ordinary health, cleanliness and sanitary standards throughout the site and that the tenant agrees to inform the landlord of any repairs to the park or services that may be required.

The landlord sent a warning letter to the tenant on September 28, 2009 requiring the tenant to install eaves troughs of adequate size and connect them to the storm drains and to fill and slope all areas of the site to ensure storm water is directed to the storm drain rather than collecting underneath the home.

The tenant contends it is the landlord's responsibility to correct any issues with the site. In his testimony the agent for the tenant argues the tenant is responsible for things above ground and the landlord is responsible for things below ground on a site.

The tenant submits the site itself, when built, was created by the introduction of hog fuel as fill and has therefore created a condition that results in an uneven settlement of the site causing damage to the tenant's home and structures on the site. In essence, the use of hog fuel as fill as introduced organic material that has over time decomposed and has created voids under the home causing the current upheaval.

The landlord argues that this particular site did not require any introduced fill as it was created by cutting out a portion of the hill behind the home, now supported by retaining walls around the back and side of the home.

In response to the tenant's hand drawn park plan indicating where the hog fuel was deposited, according to the tenant's witness statement, the landlord points out that it does indicate the hog fuel was deposited in the area representing the tenant's site but that the area where it was deposited is across the street and up the hill.

The landlord further notes that throughout the photographic evidence, including those photographs submitted showing the sewer pipe trenches created when the landlord was fixed a plugged pipe this past winter shows no such organic material or voids.

The geotechnical report submitted by the landlord indicates the settlement is greatest in an area of the carport that is 3 m wide and 4 m long and that because of the current slope of the carport and the downspout just outside of the carport that is directed under the home the settlement will continue.

The report also notes that concrete block supports are used below the home and they are generally 2 blocks high except just east of the settled carport, where there are 3 blocks used. The report also notes that there are some vertical pieces of wood beneath the deck area and an old layer of asphalt that has settled.

This report recommends the completion of test pits to determine the exact cause of settlement; re level the carport; and complete limited excavation below the home to avoid having to move the home; video camera the central drain system to determine if there any problems with the storm drain and where the drain north of the carport discharges.

The plumbing contractor's report indicates that through video examination the lines from the catch basin are clear but that the drain for gutters in the site were blocked at about 7 feet.

The home inspection report submitted by the tenant suggests the primary cause of the home's movement is deteriorating organics and inappropriate fill and that the effect

would be amplified by poor lot drainage and run off. The home inspector recommends consultation with a geotechnical engineer.

The geotechnical report submitted by the tenant indicates the engineer was informed by the tenant that surface and subsurface water flows beneath the mobile home during heavy precipitation and that the settlement has been occurring for years but has appeared to be accelerating in magnitude within the last few years.

The report goes on to say that based on shallow subsurface pits the engineer determined the subsurface includes a thin surface layer of compact granular material, overlying a silty sand soil with visually obvious organic content and with large woody inclusions.

The report indicates that ongoing maintenance will include shimming of the home and patch closed depressions unless future settlement is addressed by removal of the consolidating material and replacement by appropriately compacted imported granular fill. The extent and depth of the work required will require a subsurface investigation.

Analysis

Section 26(3) of the Act states a tenant must repair damage to the manufactured home site or common areas that is caused by the actions or neglect of the tenant. I am satisfied that through the actions of previous tenants on this site and the continued inaction by the current tenant the settlement of ground around the carport and home on this site has been accelerated due to continued misdirection of roof runoff.

I accept, based on the evidence provided, the misdirection partially results from the tenant's failure to ensure all roof drainage systems are connected to either one of the two storm drainage pipes at the road or at the rear of the site, as is required under the tenancy agreement where it states the tenant is responsible for maintenance of the utility connection lines from the park's service points to the manufactured home.

I also accept, based on the evidence provided, the slope of the carport driveway also continues to contribute and escalate the settlement problems being experienced and note the tenancy agreement states the tenant is responsible for the maintenance of the site's landscaping, fencing rock walls, driveways and other improvements.

As the landlord pointed out during the hearing the tenant signed the tenancy agreement that stated he had duly inspected the site and found the site to be entirely satisfactory for year round living, but from the evidence submitted the condition of the carport and settlement of the entire site is worse today than it was when the tenant took possession.

As the landlord has been aware of the damage to the site since 2005, prior to this tenancy, the landlord cannot expect this tenant to be completely financially responsible to repair the site to a condition better than when he took possession.

I find that since the tenant took possession of the home the carport was sloped such that water flows under the home and any work the tenant would be required to complete would not resolve the drainage issues without making the site condition better than when he took possession.

I accept that when the manufactured home was sold in March of 2006 the landlord was informed that the purchasing tenant was compensated, in the form of a reduced sale price, to make repairs to the site including the carport and the foundation. I also find the landlord failed to ensure that that tenant made the required repairs to the site during her tenancy.

The landlord's failure to ensure repairs to the site were made by the previous tenant does not allow the landlord to transfer that full financial responsibility to the current tenant. I therefore dismiss this portion of the landlord's application.

However, I note that should the landlord make the repairs to the site, this decision does not preclude the landlord from filing an Application for Dispute Resolution to claim compensation from any tenant who may have contributed to the deterioration of the site within 2 years of the end of their tenancy.

In relation to the landlord's application for an order to have the tenant replace the skirting around the base of the manufactured home, I find that until such time as the site is stabilized it is premature to require the tenant to replace the skirting. I dismiss this portion of the landlord's application, with leave to reapply once the site is stabilized.

I find the landlord has identified to this current tenant and established through evidence in this hearing that not all of the current tenant's downspouts are connected to the park system. Changes required to the roof drainage up to the connection points to the park drainage system are not changes to the site but improvements to the home itself and I find are the tenant's responsibility.

The financial claim submitted by the landlord is for compensation to cover the costs of the engineer's report and the plumbing video scoping that the landlord submitted into evidence in the amount of \$1,948.96 and recovery of the filing fee for the landlord's application. As the landlord was only partially successful, I find the tenant is not responsible for these costs and dismiss this portion of the landlord's application.

In relation to the tenant's claim to have the landlord provide costs for moving his manufactured home to another site, I find the tenant has proposed only one option and has not provided any other information as to the costs associated with other options.

Section 7 of the *Act* requires that if a tenant claims compensation for damage or loss that results from the landlord's non-compliance with the *Act*, the regulations or their tenancy agreement the tenant must do whatever is reasonable to minimize the damage or loss.

As the tenant has provided no other options other than moving the manufactured home I am unable to determine if he has taken all reasonable steps to minimize the potential damage or loss. In addition, as noted above I find the condition of the site has resulted, at least in part, by the actions or inactions of this and previous tenants. I therefore dismiss this portion of the tenant's application.

Finally, a portion of the tenants claim includes compensation for the costs of producing and distributing evidence, an engineer's services and report and a home inspection and report and recovery of the filing fee for his application. As the tenant has been unsuccessful in his application, I dismiss this portion of his application.

Conclusion

As a result of my findings above, I order the tenant to have the entire roof drainage system be connected by closed piping to the park's storm drain at the road or the storm drainage pipe at the rear of the site and any downspouts that are not connected to the park's drain storm drain system be removed no later than August 31, 2010.

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 29, 2010.

Dispute Resolution Officer