DECISION

Dispute Codes MNR MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for the cost of emergency repairs and for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail. Mail receipt numbers were provided in the Tenant's evidence. The Landlord confirmed receipt of the hearing documents.

The Landlord and Tenant appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

Issues(s) to be Decided

Has the Tenant proven entitlement to a Monetary Order pursuant to section 67 of the *Residential Tenancy Act*?

Background and Evidence

I heard undisputed testimony that the Tenant has occupied the manufactured home park site since approximately May 2003 and that the current owner of the park purchased the property approximately two years ago.

The Landlord's Witness advised that he is an independent insurance adjuster to conduct an investigation in response to a notice of claim filed by the Tenant against the Landlord. He advised that he completed his investigation on August 9, 2010 where he

determined that there was no liability on the part of the Owner (Landlord) relating to an incident where septic backed up into the Tenant's manufactured home on November 7, 2009. It was his finding that the Landlord acted appropriately by voiding the septic system and by conducting preventative maintenance. He stated that there was evidence of foreign materials put into the sewage system and as a result the Insurers agreed there was no liability. The Tenant has subsequently abandoned her claim.

The Tenant testified that she is seeking compensation in the amount of $1,806.99 for damages incurred as a result of the septic which backed up into her manufactured home on November 7, 2009. She confirmed she filed a claim for the damages through her insurance because she was not previously aware that the Landlord would be responsible. The insurance company paid a depreciated value on the repairs which worked out to be approximately 80% and the Tenant was required to pay a $500.00 deductible to the restoration company. Her monetary claim consists of the $500.00 insurance deductible, $189.21 for depreciation applied to the flooring by the insurance company, $97.50 for increased insurance premiums, $369.72 for three days of missed work which occurred in order to have the restoration company clean up the damage, plus $650.56 for four days of missed work the Tenant anticipates for when the flooring is installed in the bathroom. The Tenant confirmed that as of this date the repairs have been completed except for the installation of the bathroom flooring.

The Tenant stated that the problems with the septic system have been an on-going problem since she moved there in 2003. She advised that the problem seemed to occur after she has been away for a few days, as she travels often for work, and she was previously of the opinion that without the constant flow of water the system would just back up. To alleviate this problem she began to have guests stay at her place while she was away but soon found out that this did not prevent the problem from reoccurring. She stated that this has been an ongoing nuisance and that it had never caused damage prior to November 7, 2009. At no time did the caretaker or plumbers tell her that the problem was caused by feminine hygiene products being flushed down the toilet because if they had she would have told them she does not use them and shown

them that she does not keep those products in her residence. It was not until she received copies of the Landlord's evidence that she was advised this was a suspected cause of the backup. She argued that she has only been told that the pipes were clogged by tree roots and that the system was old and broken down.

The Tenant stated the park manager would "always come" and fix the problem every time she called and complained of slow running drains or of a clog. It was a huge inconvenience every time because she would have to clean up the mess created by them using the snake in the clean out access which is located in her closet. At one time there was a concern that the septic pipes running from the manufactured home were at issue so in 2005 or 2006 the Tenant had the drainage pipes redone that are located under her manufactured home. After the November 7, 2009 incident she saw that the Landlords were working on a section of sewer pipe that ran between her manufactured home and lot #14 and was later told that they replaced that section of pipe. She was told by the park manager in May 2009 that they were going to fix the problem and she is of the opinion that they kept delaying the repair until the backup occurred.

The Landlord testified that he has owned the park for approximately two years and he was unaware of the septic line problems. He stated that the only indication of previous problems was when one of the pumps was clogged with feminine hygiene products. The Landlord referred to his evidence which included a chronological listing of what had transpired between September 17, 2008 and November 17, 2009, as well as invoices from the plumber which clearing indicated items found in the septic lines, and copies of invoices from the tree removal company.

The Landlord stated that they attended to each complaint as soon as possible ensuring the lines were cleared out and they even installed an exterior clean out access at their cost to be able to perform maintenance on the Tenant's septic line. He notes that there were no problems between April 2009 and November 6, 2009 and no problems since the backup occurred on November 7, 2009.

The Landlord could not provide testimony about if or when the Tenant was advised of the concern about the slope of her sewage pipe coming out of her home. He stated that he felt bad that this incident occurred and confirmed that he offered to assist with the cost of the deductible or even one free month's rent. He is of the opinion that they did their due diligence in maintaining the sewage pipes which are approximately 35 years of age.

Analysis

I have carefully considered all of the testimony and evidence provided by Tenant which included, among other things, copies of Canada Post receipts, copies of letters issued by the Tenant, copies of letters and notices issued by the Landlord, and a copy of the restoration company's statement. In addition I have also carefully considered all of the testimony and evidence provided by the Landlord which included, among other things, a chronological listing of events, a typed statement from the Landlord, and copies of invoices from the plumber and tree Removal Company.

When considering a claim for damages I must determine if the claim is being brought forward for negligence on the part of the Landlord or if the claim is being brought forth as a claim for breach of contract.

In reviewing the evidence I find that there is no indication that the Landlord breached the care owed to him or that the loss claimed was a foreseeable result of such a breach. Therefore, I find there is insufficient evidence to support a claim of negligence on the part of the Landlord.

I found the opposing testimony provided by both parties to be credible. There is insufficient evidence to support the feminine hygiene products, which were found in the septic drains, came from the Tenant's home and there is insufficient evidence to support the Tenant was informed that this was the issue rather than tree roots.

There is sufficient evidence to support there has been an ongoing issue with the sewage system in the manufactured home park and that it existed prior to this Landlord purchasing the property. That being said, there is also evidence to support this new Landlord completed regular maintenance in attempts to keep the system running properly. Upon review of the November 25, 2009 plumber's invoice I note that after scoping the system they were able to determine that a portion of the system had "fallen apart" and that since that repair there have been no further problems reported.

In considering a claim for breach of contract a landlord is expected to provide the premises as agreed to while a tenant is expected to pay rent. If the tenant does not pay rent the landlord is entitled to damages. If, on the other hand, the tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord.

Section 7(2) of the Act requires that the party making the claim for compensation for damage or loss, must do whatever is reasonable to minimize the damage or loss. In this case the Tenant did minimize her loss by making a claim through her insurance provider however she suffered a further loss of $500.00 for the deductible. Based on the above, I find that given the circumstances before me, the Tenant is entitled to recover the cost of the deductible from the Landlord.

The Tenant has sought $189.21 to compensate for the depreciation applied by her insurance company. Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the repair or replacement cost by the depreciation of the original item. In this case I find that the Landlord cannot be held responsible for the Tenant's choice not to have replacement coverage for her insurance, and in consideration that damages are awarded based on the depreciated value, I dismiss the Tenant's claim of $189.21.

The Tenant is seeking $97.50, an amount she states she will be charged to her for increased insurance premiums. Upon careful review of the evidence I find there is insufficient evidence to support the Tenant will suffer an increase in insurance premiums or if she will what the actual amount of the alleged increase would be. Therefore I dismiss the Tenant's claim of $97.50.

With respect to the Tenant's claims for past and future lost wages, I find that the Tenant has chosen to incur these costs and they cannot be assumed by the Landlord. Instead, the Tenant could choose to hire bonded trades persons who can work in the home unsupervised or request someone to attend the unit to supervise while she attended work. The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of Act and not a choice to incur a cost, therefore, I find that the Tenant is not entitled to claim lost wages and I dismiss her request of $1,020.28 ($369.72 + $650.56).

Conclusion

A copy of the Tenant's decision will be accompanied by a Monetary Order for **$500.00.** The order must be served on the respondent Landlord and is enforceable through the Provincial Court 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: October 27, 2010.

Dispute Resolution Officer