



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OLC, ERP, RP, FF

Introduction

This matter dealt with an application by the tenant to obtain an Order for the landlord to comply with Act, Regulations or tenancy agreement, An Order for the landlord to make emergency repairs, an order for the landlord to make repairs to the unit, site or property and to recover the filing fee for this application.

I am satisfied that the hearing documents were served to the landlord in accordance with s. 82 of the Act.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Preliminary Issues

Both parties agreed to the change of the name for the landlord listed on the hearing documents. The hearing documents were given to the landlords' agent and that person remains the same however she testifies that the park has changed ownership and the tenants were not informed of this. Her company still acts as agents for the new landlords and collect the rent. The new landlords name has been amended by mutual agreement on the application.

Issue(s) to be Decided

- Is the tenant entitled to an Order for the landlord to comply with the Act?

- Is the tenant entitled to an Order for the landlord to make emergency repairs for health or safety reasons?
- Is the tenant entitled to an Order for the landlord to carry out repairs on the unit, site or property?

Background and Evidence

Both parties agree that this month to month tenancy started in April, 2006 under a previous landlord. The tenant pays a pad rent of \$250.00 which is paid on the 1st of each month.

The tenant testifies that the landlords have not protected her right to quiet enjoyment of her home as they gave permission for another tenant to hold a Grad party at another unit which went on for four days. During this period the Police were called out three times but they told the tenant they could not remove the party goers as it was held on private property unless the property manager or owner requests them to act.

The tenant testifies that the property manager allowed the party to go on from Friday night to Monday afternoon and the tenant testifies she only got about 12 hours sleep over the three nights. The tenant testifies that her neighbour also complained to the landlord and wrote letters to the newspaper and the school concerning the party. The tenant has provided a copy of the park rules which state 'Occupants shall conduct themselves appropriately and in a manner that does not disturb the neighbours at all times that they are in the park,' and 'Occupants shall use common areas of the park in such a way as to avoid damaging any property, leaving a mess, or disturbing other persons in the park.' The tenant states as the landlords have not abided by their own rules and allowed this grad party to take place and then did not enforce their own rules she seeks an Order for the landlord to comply with the *Act* and protect her right to quiet enjoyment.

The landlords' agent testifies that when she received the compliant from the tenant she went to talk to a few other tenants on the park to find out what had been going on and the tenants in unit 29 said they understood it was a grad party. The landlords' agent agrees that they did give permission for the party as it fell on a long weekend.

The landlords agent testifies that the police interviewed about 20 people and had told her that there was no music when they visited and she states they did not receive any other complaints that night about the party from the other tenants with the exception of the tenants neighbour who did mention that she thought the party was out of control but was not a big deal. The tenants who did hold the party apologised and cleared up any mess.

The property manager testifies that it was an organised party and the noise did get out of hand a couple of times but the police said it was all fine. He states the party ended on the Sunday night and the people were packing up on the Monday morning and most were gone by noon. The landlords' agent states all she could do was ask the people in the unit holding the party not to behave badly and that's what she did.

The tenant testifies that she has two large pine trees on her property one of these is dead and one is dying. The tenant states she is worried about these trees coming down onto her unit, a neighbours unit or on a person. Because of this she had the trees inspected by an arborist. Their report shows the trees do pose a risk to the property, neighbouring units and persons walking in the area. The tenant states she sent this letter to the landlord with photographs and an estimate from the tree company to remove the trees. She states she spoke to the landlords' agent about this matter and was told she would get back to her the next day but the landlords' agent failed to do so. The tenant states as these trees are dangerous to her property and others she requests an Order for the landlord to make emergency repairs and cut the trees down.

The landlords' agent testifies that she did contact the owner of the property but at that time the property was under foreclosure so they would do nothing about the trees. The landlords agent testifies that the property is now under development and when this has been passed all the tenants will receive a one year notice to end tenancy. The landlords' agent states the trees in question were analyzed by another tree company who agrees they are dying but states all the trees are in a similar condition and they would all have to be removed from the park if they remove the tenants' trees and this would be too great a cost.

The landlords' agent states as the trees are on the tenants' site and she maintains the rest of her site that if she wants to remove the trees herself she can ask for permission from the

landlord. The landlords' agent states that as tenants are given the right to use their individual sites as they choose that the trees should become the tenants' responsibility.

The tenant testifies that the landlords do not take care of the snow removal on the park. After a heavy snowfall in February only half the park was ploughed and the snow on her road was not touched at all. The tenant seeks an Order for the landlord to comply with the *Act* and remove all the snow from the road ways in the park.

The landlord testifies that the roadway in front of the tenants unit is not owned by the park. It is owned and managed by the regional district and Argo industries are responsible for ploughing that section of the park road by contract with the Ministry of Highways. She states she did speak to them about the snow but was told they will only plough when the snow is over 15 inches as it is classed as an 'E' road. The landlord testifies that preference is not given to other tenants and the beach side of the site does not get as much snow fall as the tenants side.

The tenant states she was not aware that the road was managed by the regional district as two years ago the landlord did hire a contractor to plough the park including her road.

The landlord testifies as the snow was very heavy two years ago they did hire a contractor to help the tenants out.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. I refer both parties to the Residential Tenancy Branch Policy Guidelines #6 which discusses the tenants' right to quiet enjoyment. In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises by the landlords actions that rendered the premises unfit for occupation, or the inaction by the landlord which permits or allows physical interference by an outside or external force which is within the landlords power to control. Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment. While the tenant has not filed a claim for the breach

of quiet enjoyment she has asked that the landlord complies with the *Act* to ensure her quiet enjoyment is upheld.

It is my decision that the landlords did allow this grad party to take place in contravention of their own park rules without any regard for the other tenants. While only two tenants may have complained about the noise from the party these tenants are still entitled to have their quiet enjoyment of their rental units. While I accept that this may or may not be a one off occurrence I find it is necessary to issue an Order for the landlord to comply with the *Act* in this matter and ensure the tenants right to quiet enjoyment of her rental unit is protected pursuant to s. 22 of the *Act*.

With regard to the tenants claim for emergency repairs; S. 27(1)(b) of the *Act* states emergency repairs means repairs that are necessary for the health or safety of anyone or for the preservation or use of property in the manufactured home park. The tenant has provided a copy of the estimate from the arborist who does state that the trees are dead and dying and pose a hazard to the property from both stability and fire risk. The recommendation is for the trees to be removed. The landlord argues that as the trees are on the tenants' site that she should be responsible for them. However, as the tenant only rents the site from the landlord the responsibility for the trees falls to the landlord as the owner of the site.

As the landlord has not provided any evidence to show the information from the arborist is false or misleading it is my decision that the trees do pose a potential risk to the tenant, her neighbors and property and the landlord must take action to ensure they are removed or made safe. If the landlord fails to do this the tenant may have the trees removed or made safe in line with s. 27 of the *Act* and provide the receipts to the landlord to be reimbursed.

With regard to the tenants claim for snow removal; the landlord has testified that the tenants' road is part of the regional district and therefore the responsibility for snow removal falls to the regional district. It is therefore my decision that this section of the tenants' application is dismissed and I would suggest she contact the regional district in the event of heavy snowfall in the future.

As the tenant has been largely successful with her claim she is entitled to recover her **\$50.00** filing fee and may deduct that from her next rent payment when it is due and payable to the landlord.

Conclusion

I HEREBY FIND in partial favor of the tenants claim. The tenant will receive an Order for the landlord to comply with the Act with regard to her right to quiet enjoyment of her rental unit. The tenant will receive an Order for the landlord to carry out emergency repairs and ensure the two trees on the tenants' site are removed or made safe within 14 days of receiving this decision.

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: March 04, 2011.

Residential Tenancy Branch