Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, RP, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenants have requested compensation for damage or loss under the Act and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The tenants submitted a detailed breakdown of their monetary claim, which exceeded the amount indicated on the application. The landlord made a written submission, in response to the claim, to specific portions of the claim, which totaled just over $7,000.00.

As the tenants application indicated a claim in the sum of $7,000.00 and their detailed calculation of the claim exceeded that on the application, I determined that I would consider those portions of the claim to which the landlord had specifically responded,

The tenant's chose to withdraw their request for gravel and during the hearing withdrew the request for fencing costs.

The current owners purchased the Park in August 2011; the tenants confirmed that a good portion of their claim relates to the previous park owners. A copy of a decision issued on March 5, 2012 (file 782214) was provided as evidence.

At a hearing held on March 2, 2012, the tenants had named the previous park owners, making a claim for many of the same matters that are contained in the current application. A decision was issued on March 5, 2012, that determined the current Park

owners should be named in a claim, as the tenancy had not ended and the previous owners had transferred their interests, as a result of a sale of the Park. The dispute resolution officer found that section 1(d) of the Act prohibited the tenants from making a claim against the former landlords.

At the start of the hearing I explained that I have concluded that the decision issued on March 5, 2012; resulted in a finding that prohibited me from considering a claim that extended back to a time when the current landlord did not own the Park and that I would consider any portion of their claim that related to the time period following July, 2011.

During the hearing the tenants expressed frustration, as they did not believe that the current Park owners were necessarily responsible for issues that occurred prior to their purchase of the Park. However, the tenants are seeking solutions, some of which relate to pre-existing problems.

The tenant claimed costs for a filing fee paid on the previous file; that portion of the claimed was declined, as the matter has been previously decided.

The parties agreed that all evidence had been received in time for review and response.

Issue(s) to be Decided

Are the tenants entitled to compensation for damage or loss under the Act?

Must the landlord be ordered to make repairs to the site or property?

Are the tenants entitled to filing fee costs?

Background and Evidence

In 2002, the tenants purchased the manufactured home from the male tenant's father. The site rent is currently $215.00 per month, due on the first day of each month. Effective August 1, 2012, the rent will increase to $229.00 per month.

Neither party submitted a copy of the tenancy agreement that was signed in 2002; the tenants stated they did not receive any Park Rules at that time. The landlord said that the tenancy agreement included the Rules. In August 2011, the landord issued a set of updated Park Rules; a copy was supplied as evidence.

The tenants made the following monetary claim:

- $1,500.00 – replace skirting;
- $220.00 – lawn top soil; and

- $4,200.00 – compensation for hydro usage since 2002.

The tenants have a number of concerns that they wish the landlord to address:

- Spring run-off flooding their rental site;
- Snow removal; and
- A depression under their trailer caused by excavation initiated by the previous landlord.

Each party supplied photographs of the rental site. Pictures taken during this year's spring run-off showed the home site engulfed by water. The tenants agreed that the water remained for a period of 2 days. The tenants stated that the repeated flooding of their site, year after year, has resulted in the need to frequently replace the skirting to the trailer. Particle board previously purchased has been rendered useless; photographs were supplied as evidence.

The tenants have claimed the cost of skirting; however no verification of the cost was supplied other than 2 receipts for costs incurred in May 2010; totaling $356.70. A 3rd receipt in the sum of $59.36 which was illegible.

The tenants do not want snow piled near their home and want the landlord to ditch the area, so that the water stops running onto their site. The tenants had placed top soil at the front of the site, replace the loss of soil removed as a result of the flooding over the years and want to be compensated.

There is a depression under the tenant's home; caused by an excavation completed a number of years ago by the previous Park owner. The tenants believe that the sewer lines for one half of the Park are placed under their home. The tenants want the landlord to repair the depression as it is causing their home to twist and is causing water to pool under the home.

The tenants said the landlord's agent can see the problem from the road, every time he drives by and that email evidence from earlier in 2012; show they have tried to seek a solution with one of the current Park owners.

On April 10, 2012, the tenants emailed a Park owner and asked that problems with water and other damages be fixed. The tenants requested skirting, that the home be lifted, gravel be supplied, framing, skirting, insulation and a vapour barrier. The landlord responded stating he hoped the tenants could fix the problem quickly and that it was only a temporary situation.

In 2005 one of the Park street lights was connected to the hydro box in front of the tenant's site. The tenants believe that this light is operated using the tenant's electrical service and that it has caused a significant increase in power usage. Since February of

this year the tenant's have turned that street light off, as they do not want to pay for the hydro used by the light. Copies of hydro bills were not submitted as evidence.

The tenants believe the cost to run the light, based on advice they have received, is approximately $1.00 per day; the landlord did previously offer the tenant's .35 cents per day; in an attempt to settle the dispute.

The landlord recently had obtained a permit to complete road work; they plan on installing a ditch and drainage tile to deal with the spring run-off problems. A recent medical emergency caused the landlord to delay the work; however, within the next few weeks the landlord will reapply for the permit and then commence the work. This should alleviate the flooding.

The landlord stated they do not pile snow next to the tenants' home; however, some snow is piled across the road from their site. This was established in the photographs supplied as evidence.

The landlord's agent stated he has never been made aware of the depression under the tenant's home. The agent agreed to meet with the tenants at 2:30 p.m. on June 26, 2012, in Order to investigate the problem. The agent is not sure what, if anything can be done to repair the depression. The parties discussed the name of the company that had apparently completed the excavation, on behalf of the previous Park owners.

The landlord stated that the tenants are responsible for keeping their home properly supported by the use of some sort of pilings. The tenants submit that the home is shifting as the result of negligence on the part of the previous landlord.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

In relation to the claim for hydro costs going back a period of 10 years; the landlord has agreed to have an electrician investigate the tenant's hydro meter in order to definitively determine if the park street light is connected to the tenant's hydro service. Further, pursuant to section 55(3) of the Act, I have made the following order:

- No later than July 15, 2012, the landlord will obtain a written report from the electrician setting out his findings in relation to the street light electrical connection;

- That no later than July 15, 2012, the tenants will be given a copy of the electrician's report;
- That if the electrician determines the power to the light has been running from power supplied by the tenant's hydro service that the parties attempt to reach a mutual agreement for compensation; and
- Failing any mutual agreement; that the tenants are at liberty to submit an application claiming compensation for costs, based on verifiable evidence.

The tenants have not provided any verification for the balance of monetary claims made for the period of time since July, 2011; therefore I find that the balance of the monetary claim is dismissed.

Section 26 of the Act provides:

> ***26*** *(1) A landlord must*
>
> *(a) provide and maintain the manufactured home park in a reasonable state of repair, and*
>
> *(b) comply with housing, health and safety standards required by law.*

In relation to the spring run-off problems, the landord is planning on competing ditching which should address the problem of water running through the tenant's site in the spring. Pursuant to section 26 of the Act, I Order the landlord to:

- No later than October 31, 2012, complete adequate ditching to the area surrounding the tenant's site so that spring run-off does not encroach on their site or under their home; and
- That this ditching must take into account the need to drain run-off from any snow that is piled in close proximity to the tenant's site.

In relation to the request for repair of the excavation that occurred prior to August 2011, on the tenant's site; the landlord has agreed to meet with the tenants on June 26, 2012, at 2:30 p.m. in order to investigate the problem. There is no dispute that the excavation occurred prior to the time the current Park owners purchased the property.

There was no evidence before me that would support the claim made by the tenants that the reported depression under their home has been properly reported to the landlord. The tenants have not issued any written request to the landlord nor have they provided any evidence that the landlord has breached the Act, by failing to provide the Park in a reasonable state of repair.

Based on the agreement of the landlord to investigate the reported problem under the home, pursuant to section 55(3) of the Act, I also Order the landlord to:

- investigate the report of a depression under the tenant's home, in Order to establish if the landlord holds any responsibility for repair, as required by the Act.

If disagreement continues in relation to the responsibility for any repair that may be required to the site, the tenants are at liberty to submit a claim requesting repair Orders only, based on verifiable evidence that the current landlord has failed to comply with housing, health and safety standards required by law and a site that is in a reasonable state of repair.

As the tenant's claim has partial merit I find that they may deduct $50.00 in filing fee costs from the next month's rent due.

Conclusion

The landord will provide the tenant's with an electrician's report no later than July 15, 2012, that determines whether the Park street light is connected to the tenant's electrical service. If it is connected the parties may reach a mutual agreement for any compensation and, failing agreement, the tenants may reapply requesting compensation.

The balance of the tenant's monetary claim is dismissed.

The landlord will investigate the problem reported to exist under the home and make any repairs, as required by the Act. If agreement is not reached between the parties, the tenants are at liberty to reapply for a repair Order only.

The tenants are entitled to deduct the $50.00 filing fee from the next month's rent due.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 55(1) of the *Manufactured Home Park Tenancy Act.*

Dated: June 26, 2012.

Residential Tenancy Branch